

STATE OF MICHIGAN  
IN THE CIRCUIT COURT OF THE COUNTY OF WAYNE  
Case No. 95-521228-NP  
Hon. Robert J. Colombo, Jr.

NELSON SORISE and  
DOLORES SORISE,  
Plaintiffs

vs.

20TH CENTURY GLOVE CORP.  
OF TEXAS, et al.,  
Defendants

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VIDEOTAPE DEPOSITION OF: DR. WILLIAM SMITH

BEFORE: Michelle A. Costigan, Notary Public, at the  
Marriott Hotel, 308 Godfrey Blvd., Bangor, Maine, on  
Wednesday, May 7, 1997, beginning at 9:10 a.m.

APPEARANCES

John M. Klamann, Esq.  
Steven E. Crick, Esq.

For the Plaintiffs

William S. Ohlemeyer, Esq.  
Roger C. Geary, Esq., Esq.

For Defendant Lorillard

Mark A. Wisniewski, Esq.

For Defendant Owens Corning

Peter J. Rubin, Esq.

For Defendant Owens Illinois

Andrew J. McElaney, Jr., Esq.

For Defendant Hollingsworth  
& Vose Company

Richard L. Caretti, Esq.  
(via telephone)

For Defendant MACCO

DON THOMPSON & ASSOCIATES

Court Reporting

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2 Michelle A. Costigan, Notary Public, at the Marriott  
3 Hotel, 308 Godfrey Blvd., Bangor, Maine, on Wednesday,  
4 May 7, 1997, beginning at 9:10 a.m.)

5 \* \* \*

6 THE REPORTER: Sir, if you could raise your right  
7 hand, I'll swear you in.

8 DR. SMITH: Yes.

9 THE REPORTER: Do you swear the testimony you're  
10 about to give will be the truth, the whole truth, and  
11 nothing but the truth, so help you God?

12 DR. SMITH: I do.

13 THE REPORTER: Great.

14 \* \* \*

15 DR. WILLIAM SMITH, called, after having been duly sworn, on  
16 his oath deposes and says as follows:

17 EXAMINATION

18 BY MR. OHLEMEYER:

19 Q Good morning, Dr. Smith.

20 A Good morning.

21 Q My name's Bill Ohlemeyer. And before Mr. Crick or  
22 Mr. Klamann ask you some questions this morning, I'm  
23 going to ask you a few questions. Will you let me know  
24 if you don't understand a question I ask you?

25 A Yes, sir.

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1 Q Can you tell me when and how you became acquainted with  
2 or familiar with Mr. Crick or Mr. Klamann?

3 A Mr. Crick telephoned me.

4 Q And can you recall about when that was?

5 A It would have been in the fall of last year, 1996.

6 Q And what was -- what was the nature of the call? What  
7 do you recall about that call?

8 A I recall that Mr. Crick asked me if I had worked on  
9 asbestos, if I had worked on cigarette tar, cigarette  
10 smoke tar, and if I had worked at New York University.

11 Q All of which at various points in time you have done?

12 A Yes.

13 Q Okay. Did he tell you anything about the -- the  
14 lawsuit in which he represents Mr. and Mrs. Sorise?

15 A He told me that he was representing a plaintiff in a  
16 lawsuit against some tobacco company. I've forgotten  
17 if he specified which one.

18 Q Has he told you anything else about that lawsuit since  
19 then?

20 A Yes.

21 Q What was it that he told you about that lawsuit?

22 A He wanted to know if I had talked with people from  
23 cigarette companies.

24 Q Did he tell you anything about the facts of this  
25 lawsuit or the claims that his client is making against

1 the defendants in this lawsuit?

2 A He told me that he wanted to know whether I had met

3 with an officer of the company that made Kent

4 cigarettes.

5 Q Did he tell you anything else about the claims that his

6 clients were making in this lawsuit?

7 A He told me that the filter of Kent cigarettes was an

8 asbestos filter, and he wanted to know whether I had

9 given any comment on asbestos to an officer of the

10 company that made Kent cigarettes.

11 Q Are you -- can you tell me, Dr. Smith, whether you're

12 here today pursuant to a subpoena or at Mr. Crick's

13 request?

14 A At Mr. Crick's request.

15 Q Are they compensating you or paying you in any way for

16 the time you're having to spend here?

17 A Yes, sir.

18 Q What are they paying you?

19 A \$150 an hour.

20 Q And have they paid you for any time in connection with

21 this deposition up to today?

22 A Yes, sir.

23 Q How many hours and how much money?

24 A Well, Mr. Crick came to see me last fall. And I

25 believe that the number of hours added up to -- at any

1 rate, the compensation to me was \$2,000 or \$2,100.

2 Q Did Mr. Crick bring any material or any documents or

3 any photographs for you to review at that or any other

4 meeting?

5 A He brought a photograph and a copy of Life Magazine to

6 me yesterday. I don't recall that he previously

7 brought documents of any sort to me.

8 Q What was the -- what was depicted in the photograph and

9 what was the topic of the Life Magazine that he brought

10 to your attention?

11 A The topic was about cigarette smoke research, research

12 on cigarette smoke. And Mr. Crick told me that the

13 photograph, a photograph that he had enlarged, showed

14 the smoking machine at New York University, smoking

15 cigarettes to produce cigarette tar, smoke tar.

16 Q The Life Magazine article -- was it the one with Dr.

17 Wynder and the smoking machine in the laboratory?

18 A Well, it was an issue of Life Magazine. I don't

19 remember having ever seen it in the days when it came

20 out.

21 But Mr. Crick showed it to me yesterday, and it

22 had a picture of several people who were doing

23 experimental studies on cigarette smoke.

24 Q You're currently retired, Doctor; is that right?

25 A I am.

1 Q How long have you been retired?

2 A Since 1983.

3 Q And what was your occupation prior to your retirement?

4 A I worked as director of the Health Research Institute

5 at Fairleigh Dickinson University in Madison, New

6 Jersey.

7 Q How long were you associated or affiliated with

8 Fairleigh Dickinson?

9 A 25 years.

10 Q And prior to Fairleigh Dickinson, where did you -- I

11 take it you're a medical doctor?

12 A Yes.

13 Q Did you practice your profession prior to your

14 affiliation with Fairleigh Dickinson?

15 A Well, I have always done laboratory research and

16 bacteriology and pathology. I have not practiced

17 medicine.

18 Q Your specialty has been research -- medical research

19 involving biological systems?

20 A Yes, sir.

21 Q Which is a scientific description of animal research;

22 is that right?

23 A Yes, sir.

24 Q Where did you -- where did you do your research before

25 Fairleigh-Dickenson?

1 A Well, when I finished medical school, my first job was

2 at the Massachusetts General Hospital at the Harvard

3 Medical School. I was assistant in bacteriology at the

4 Harvard Medical School.

5 And then I was assistant in pathology at the

6 Rockefeller Institute for Medical Research in New

7 York.

8 And then I was associate at the Sloan-Kettering

9 Institute for Cancer Research. That was part of

10 Memorial Hospital Center in New York City.

11 Let's see. I suppose I was at the Harvard Medical

12 School for four years, and then four years at the

13 Rockefeller Institute. Two years at Sloan-Kettering,

14 and then six or seven years at New York University.

15 Q You got your medical degree in 1938 at Johns Hopkins?

16 A Yes, sir.

17 Q And then what was your -- did you have a specialty

18 at -- in connection with your study of medicine?

19 A Not at Hopkins. I was just going through the medical

20 school.

21 Q Then you went to Mass General for four years?

22 A First to the Harvard Medical School up in Brookline.

23 And then I was laid up with tuberculosis for a couple

24 of years. And when I came back to work, I was working

25 at the Mass General Hospital, which was a part -- my

1 position there was in the Harvard Medical School.  
 2 Q And then what was the focus of your research at the  
 3 Rockefeller Institute?  
 4 A We worked -- I worked with a Dr. Peyton Rous, who had  
 5 discovered the first tumor virus. And when I was  
 6 working with him, he was working with chemical  
 7 carcinogens, and I was his assistant in that work.  
 8 Q Am I right that a chemical carcinogen is a substance  
 9 that can produce tumors in an animal experiment?  
 10 A Yes, sir.  
 11 Q And what were you doing at Rockefeller to research that  
 12 subject?  
 13 A Well, we were working on the effect of chemical  
 14 carcinogens on mouse fetal -- fetal mouse tissue.  
 15 Q What types of chemicals were you investigating?  
 16 A Polycyclic hydrocarbons.  
 17 Q And how are polycyclic hydrocarbons -- or where are  
 18 they found in the environment?  
 19 A Well, the first pure chemical that was demonstrated to  
 20 have the property of inducing cancer in animals was  
 21 isolated from coal tar.  
 22 Q And was that chemical a polycyclic aromatic  
 23 hydrocarbon?  
 24 A Yes, sir.  
 25 Q Are there other things in the environment that can

1 produce polycyclic aromatic hydrocarbons?  
 2 A Yes.  
 3 Q Can you give me some examples?  
 4 A Well, in the cracking of petroleum by the fluid  
 5 catalytic cracking process, some of the straight chain  
 6 petroleum molecules are rounded up at high temperatures  
 7 into polycyclic hydrocarbons.  
 8 And the work that I was doing at Sloan-Kettering  
 9 was to test the yield of high boiling material from  
 10 this new cracking process to test it on animals for  
 11 carcinogenicity.  
 12 Q And when you say tested on animals, you would take that  
 13 material and apply it to the back of a mouse to see if  
 14 it produced tumors?  
 15 A We did.  
 16 Q Was that the accepted method of doing that kind of  
 17 research at that time?  
 18 A Yes, sir.  
 19 Q As you progressed in your research and moved on to  
 20 Fairleigh-Dickenson, did you develop other techniques  
 21 to conduct that type of experiment without having to  
 22 use mouse skin?  
 23 A For testing materials for carcinogenicity?  
 24 Q Correct.  
 25 A Yes, sir. We shifted from mice to hamsters to have a

1 little bit bigger animal, principally because we wanted  
 2 to have an animal that was large enough for me to  
 3 insert a pipette into the trachea to instill test  
 4 materials into the lungs, which would have been  
 5 difficult with mice. So we used hamsters. And we  
 6 worked there principally with asbestos materials,  
 7 different kinds of fibers.  
 8 Q At Fairleigh-Dickenson?  
 9 A Yes, sir.  
 10 Q Did you ever test polycyclic aromatic hydrocarbon by  
 11 inhalation to see if they produced tumors in animals?  
 12 A No, sir.  
 13 Q Why not?  
 14 A Well, I didn't want to inhale the polycyclic  
 15 hydrocarbons along with the animals.  
 16 Q Is inhalation the route of exposure to those types of  
 17 compounds for most people?  
 18 A For human exposure, right.  
 19 Q Okay. When you got then to Sloan-Kettering, Doctor, is  
 20 that -- what point in time? Is that the early '50s?  
 21 A When did I go to Sloan-Kettering?  
 22 Q That's a better question. When did you go to  
 23 Sloan-Kettering?  
 24 A When? Let's see. '47, 1947.  
 25 Q And you were there for two years?

1 A Yes, sir.  
 2 Q And then from there you went to NYU?  
 3 A Yes, sir.  
 4 Q Where you stayed until about 1958, as I figure it?  
 5 A '56.  
 6 Q '56 you went to Fairleigh-Dickenson?  
 7 A I think I went to Fairleigh-Dickenson in about '58.  
 8 Q What did you do between New York University and  
 9 Fairleigh-Dickenson?  
 10 A I had a fellowship to travel around the country and  
 11 visit various laboratories.  
 12 Q In connection with your work on chemical  
 13 carcinogenesis?  
 14 A Well, in connection with cancer research. Let's put it  
 15 general.  
 16 Q Is it fair to say, Doctor, that once you got to the  
 17 Rockefeller Institute, your interest and your specialty  
 18 became cancer research?  
 19 A Yes.  
 20 Q And that's a subject that you were involved in studying  
 21 during the 1950s?  
 22 A That's right.  
 23 Q And continued into the '60s, the '70s and the '80s?  
 24 A Yes.  
 25 Q In the 1950s, the early 1950s, is it fair to say that

1 scientists and medical people were observing an  
2 increase in the incidence of lung cancer in this  
3 country?  
4 A Yes.  
5 Q And that -- did that spark some interest in researchers  
6 and investigators?  
7 A Yes.  
8 Q People like yourself were interested in trying to  
9 determine what was responsible for the increase in the  
10 incidence of lung cancer?  
11 A Yes, sir.  
12 Q There were statistical studies that were being  
13 published at the time that suggested that cigarette  
14 smokers were developing lung cancer more often than  
15 nonsmokers; is that right?  
16 A Yes.  
17 Q And Dr. Wynder did some chemical studies or some  
18 physiological studies where he painted tobacco tar on  
19 the back of mice and observed an increase in what they  
20 call papillomas; is that right?  
21 A Yes.  
22 Q And do you recall he published the results of that  
23 study, his first study, in 1953 with Dr. Hoffman?  
24 A Approximately there.  
25 Q Okay. Now, at that point in time in the '50s, there

1 were a variety of what were called environmental and  
2 occupational factors that were suspected as possible  
3 causes for the increase in lung cancer; is that right?  
4 A Yes.  
5 Q And cigarette smoke was one of them?  
6 A Yes.  
7 Q Along with some other things that people like yourself  
8 were researching and writing about?  
9 A Right.  
10 Q Can you describe for us the work that you did with  
11 Dr. Wynder in the 1950s?  
12 A In the spring of 1952, Dr. Rhoads, who was the director  
13 of the Sloan-Kettering Institute, asked me to come  
14 there to a meeting with representatives from the  
15 tobacco industry to talk about experimental procedures  
16 that might be utilized to test for biological activity  
17 of cigarette smoke tar. I believe Dr. Wynder was at  
18 that meeting.  
19 It was a few weeks later that many of the same  
20 representatives from the tobacco industries met at New  
21 York University. And again, we talked about  
22 experimental procedures that were available for study  
23 of the biological effects of cigarette smoke.  
24 Q Would you define for me what biological activity means?  
25 A Well, specifically, we were talking about tests for

1 carcinogenicity.  
2 Q And what -- what -- what would the test involve and  
3 what would the end point be of the test? What were you  
4 looking for in the test?  
5 A We were looking to see whether or not cigarette smoke  
6 tar would induce -- would be carcinogenic.  
7 Q Well, how would you decide whether or if it was  
8 carcinogenic?  
9 A Through tests on animals.  
10 Q Okay. And what type of tests?  
11 A Well, the most pertinent tests, of course, would be  
12 inhalation exposures. Now, that was a complicated  
13 procedure that meant setting up lab equipment.  
14 And one much simpler procedure was to test the  
15 material on the skin of animals that were known to be  
16 susceptible to developing tumors in response to  
17 carcinogenic tars and oils.  
18 And since I had done that with a program that had  
19 been set up at Sloan-Kettering by Standard Oil of New  
20 Jersey to test fractions from cracking of petroleum --  
21 and that program had been moved and me with it from  
22 Sloan-Kettering to the new New York University  
23 Institute of Industrial Medicine -- that's where I was  
24 continuing that program of testing materials that would  
25 be submitted by Standard Oil for tests.

1 And therefore, we were familiar with doing tests  
2 of that sort; and we could do them with cigarette smoke  
3 condensate and with fractions of it.  
4 Q And you had had experience in taking petroleum products  
5 and using this mouse skin painting technique to test  
6 them to see if they produced biological activity on the  
7 back of the mouse?  
8 A That's right.  
9 Q And so you were consulted to use that same expertise to  
10 take the smoke collected from cigarettes to do the same  
11 type of test?  
12 A Yes.  
13 Q And one of the things you wanted to do was try to break  
14 that smoke down into different compounds to see if  
15 there was a difference in the relative biological  
16 activity of the various classes of compounds in smoke?  
17 A That's right, because with the oil, we had found  
18 through tests with the mice that the carcinogenic  
19 material was in a very, very small fraction of the  
20 oil.  
21 And therefore, we felt that if we could start with  
22 cigarette smoke condensate and take the total  
23 condensate and fractionate it and find if there was  
24 some specific compound or compounds that were present  
25 in it that might be removed in some way, it might be a

1 worthwhile test.  
2 Q If you could find something in the smoke that was  
3 responsible for the biological activity, the thought  
4 was it might be removed from the smoke or the smoke  
5 might be modified so that it wouldn't be present?  
6 A Yes.  
7 Q And then if the smoke -- I guess -- was one of the  
8 purposes of these types of experiments to see whether  
9 cigarette smoke was responsible for the epidemiological  
10 association between smoking and lung cancer?  
11 A Yes.  
12 Q It was a way to test the plausibility --  
13 A Yes.  
14 Q -- of that hypothesis?  
15 A Yes.  
16 Q There are -- are there some limitations, though,  
17 Doctor, to the types of conclusions you can draw from  
18 those types of experiments as it relates to human  
19 experience?  
20 A Yes.  
21 Q What are they?  
22 A Whether a man is a mouse is one. For example, with the  
23 high boiling catalytically cracked oil, application of  
24 it to mice and to rabbits would induce tumors.  
25 Application to guinea pigs and to rats would not.

1 Q And when you say whether a man is a mouse, you're  
2 saying that just because -- you can't be sure that the  
3 same response that you observe in the mouse would be  
4 observed in a man?  
5 A True.  
6 Q Okay. At that point in time, Doctor, had any  
7 experimenter ever been able to induce a lung cancer  
8 resembling human lung cancer in mice by using tobacco  
9 products?  
10 A Not that I'm aware of.  
11 Q So then did you become involved with Drs. Kosak and  
12 Wynder and Nelson in investigating the chemical nature  
13 of cigarette smoke?  
14 A Yes, sir.  
15 Q And that was a study, do you recall, that was done at  
16 the Institute of Industrial Medicine at New York  
17 University?  
18 A Yes.  
19 Q Can you describe for me generally who Drs. Kosak,  
20 Wynder, and Nelson were?  
21 A Dr. Kosak was a chemist. Dr. Wynder was an M.D.  
22 Dr. Nelson was a biochemist and was the director of  
23 research at New York University Medical -- at the  
24 Institute of Industrial Medicine.  
25 Q Were you all more or less equals, or was anybody in

1 that group supervising anybody else or evaluating -- I  
2 don't want to say it was somebody's boss, but what I'm  
3 trying to understand, Doctor, is what the relationship  
4 was between the four of you as it related to New York  
5 University.  
6 A Dr. Nelson was the director of research for the  
7 institute.  
8 Q So you reported to him?  
9 A Yes.  
10 Q In the progress report on that investigation, there is  
11 a reference to the fact that the cigarettes you smoked  
12 for that experiment were automatically smoked. Do you  
13 recall that fact, that you smoked the cigarettes on a  
14 machine to collect the tar?  
15 A That's how it was done.  
16 Q Do you know why -- or were you involved in deciding how  
17 to smoke the cigarettes?  
18 A No. That was done by Dr. Kosak and Dr. Nelson.  
19 Q Do you recall, though, that it was a mechanical  
20 apparatus that smoked the cigarettes?  
21 A Yes.  
22 Q And do you recall that an apparatus was chosen to  
23 conform as nearly as possible to the way humans smoke?  
24 A That was my understanding.  
25 Q Did you have any understanding as to why that was an

1 objective of the investigational part of the protocol?  
2 A Because the purpose was to learn whether or not there  
3 was carcinogenic material in cigarette smoke. And that  
4 would tie in with the epidemiological data that was  
5 coming out about lung cancer being more common in  
6 people who smoke cigarettes heavily.  
7 Q Is it fair to say, Doctor, that because you were doing  
8 an experiment that was designed to provide some  
9 information or -- provide some information about the  
10 effect of smoking, you tried to simulate the smoking in  
11 your experiment as closely as possible as you could to  
12 the way people smoke?  
13 A Yes, sir.  
14 Q Do you -- do you recall why the cigarettes were kept at  
15 a certain humidity before they were used in the  
16 experiment?  
17 A No.  
18 Q Do you recall why an effort was made to smoke them  
19 within four weeks of their receipt?  
20 A No. Those arrangements of receiving the cigarettes and  
21 smoking them in the machine were all made by Dr. Kosak  
22 and Dr. Nelson. My job was to receive the total tar  
23 and fractions of it and test those -- that on animals.  
24 Q Do you recall whether your work on this experiment  
25 occurred before or after you talked with anybody at

1 Lorillard about their filter material?

2 A I don't know the name. I can't use the name Lorillard,

3 because the man that I remember talking with was

4 manufacturing Kent, told me that he was manufacturing

5 Kent cigarettes. Whether he was with Lorillard, I

6 don't know.

7 Q But do you recall whether you spoke with that man

8 before or after you did the work with Drs. Kosak,

9 Wynder, and Nelson?

10 A As I recall, I talked with him before we started the

11 work with Kosak and Nelson.

12 Q Can you tell me, Doctor -- I think -- have you

13 mentioned Dr. Rhoads this morning?

14 A Dr. Rhoads?

15 Q Yeah. Tell me again who Dr. Rhoads was.

16 A He was the director of the Memorial Cancer Center of

17 which Sloan-Kettering Institute was a part.

18 Q And who was Dr. -- do you know what -- strike that.

19 Do you recall a Dr. Lanza, Anthony J. Lanza?

20 A Dr. Lanza was the director of the New York University

21 Institute of Industrial Medicine.

22 Q Do you recall being involved in the '50s with an

23 organization called the Cancer Prevention Committee?

24 A Yes.

25 Q Tell me what that organization was and how you got

1 involved with it.

2 A I got involved with it because at Sloan-Kettering the

3 program for -- that the Standard Oil Company had asked

4 to be conducted there was looking for prevention,

5 identification, and control of any carcinogenic

6 materials. And there was, of course, a background of

7 knowledge going way back to the chimney sweeps who

8 developed skin cancer so commonly, and then later other

9 evidence for chemical agents in the environment that

10 would induce tumors of one sort or another.

11 And the Cancer Prevention Committee was set up

12 with the idea of bringing together not only physicians

13 but also engineers from companies who would actually

14 know what the chemical aspects of the different

15 operations might be -- people from academic

16 institutions, statisticians, and people from government

17 agencies who were involved with control.

18 And the Cancer Prevention Committee was set up to

19 try to bring together people from those different

20 backgrounds to meet and talk about approaches to what

21 could be done for prevention of cancer through

22 identification and control of carcinogenic agents in

23 the environment.

24 Q And it was a procedure designed to facilitate the

25 exchange of information among interested scientists?

1 A Yes.

2 Q And the proceedings of the committee were published?

3 A Yes, sir.

4 Q Do you recall writing the forward to the --

5 A I do.

6 Q -- to the proceedings? And it says in the proceedings,

7 Doctor, that the committee was devoted to the study of

8 environmental factors and cancer.

9 A Yes, sir.

10 Q That's basically about what --

11 A Yes, yes.

12 Q -- you just told me. You were on the board of

13 directors?

14 A Right.

15 Q And do you recall contributing three articles to the

16 proceedings that were published, including a statement

17 of the purpose and program of the committee, a

18 reference to experimental aspects of lung cancer, and a

19 survey of current British and European studies of

20 occupational tumor problems?

21 A Yes.

22 Q Do you recall writing at the time that the available

23 statistical studies indicating a relationship between

24 cancer in the human lung and tobacco smoking or urban

25 air pollution are, however, open to serious criticism?

1 A Are you quoting from one of the articles there?

2 Q Well, I'm reading it.

3 A Yes.

4 Q My question, Doctor, is, at that time, what were the

5 criticisms that you can recall?

6 MR. KLAMANN: What page are you referring to?

7 MR. OHLEMEYER: Page 4. I'm sorry.

8 MR. KLAMANN: And which paragraph did you read

9 from so we can find that quickly?

10 MR. OHLEMEYER: Yeah. I'm sorry. It's the last

11 sentence of the third paragraph from the bottom.

12 Q It says, Doctor, presently available statistical

13 studies indicating a relationship between cancer in the

14 human lung and tobacco smoking or urban air pollution

15 are, however, open to serious criticism.

16 Do you recall what any of those criticisms were at

17 the time?

18 MR. KLAMANN: You might read the sentence before

19 that in order to give that some context.

20 BY MR. OHLEMEYER:

21 Q Oh, sure. -- ~~me~~ sure, sure. Several investigators --

22 well, let me -- I'll just -- let me read you a few

23 sentences, Doctor. It says: It has been shown that

24 tars collected from tobacco smoke can produce cancer in

25 animals. Urban air pollution is another potential



1 hazard affecting large numbers of persons. Several  
2 investigators have demonstrated that cancer can be  
3 elicited in animals by extracts of soot collected from  
4 the air of various cities. Presently available  
5 statistical studies indicating a relationship between  
6 cancer in the human lung and tobacco smoking or urban  
7 air pollution are, however, open to serious criticism.

8 Do you recall what those criticisms were at that  
9 time?

10 A One criticism that I would think I was probably  
11 thinking of in writing that was that an experienced  
12 cancer investigator in England, a Dr. Passey, had  
13 tested cigarette smoke condensate on animals and had  
14 not found that it induced any cancer in them. That  
15 was -- he did find a few benign tumors, papillomas on  
16 the skin of mice.

17 Actually, our experience at New York University  
18 was very similar to Passey's and in sharp contrast to  
19 Ernest Wynder's work, because Wynder, I know, at that  
20 time showed me some animals that he had painted with  
21 cigarette smoke condensate, and there were large  
22 cancers in those animals.

23 In the animals that we studied at New York  
24 University, I found benign tumors, papillomas, in a few  
25 animals, but no cancers. And we tested with the same

1 strain of mice that Wynder had used. And we tried to  
2 simulate the smoking machine that he had used, and we  
3 tried to adjust the dose pattern. So what the  
4 discrepancy was, we never knew.

5 MR. KLAMANN: Would you like some coffee, Doctor?

6 A Oh, coffee's fine. I've never turned down coffee in my  
7 life.

8 BY MR. OHLEMEYER:

9 Q Doctor, on Page 5 of your forward, -- on Page 5, the  
10 chapter where you describe the purpose and program of  
11 the Cancer Prevention Committee, the end of the first  
12 full paragraph there or the first paragraph on the  
13 page, it says, Doctor, that your interest in  
14 occupational tumors stems from the fact that they are a  
15 unique group in two respects.

16 First, they provide almost the only instances in  
17 which causes of human cancers have been clearly  
18 understood. And second, as a corollary to the first  
19 point, they provide almost the only instances in which  
20 genuine cancer prevention can be accomplished with the  
21 present state of knowledge.

22 What was it about occupational tumors that made it  
23 easier to understand them at that point in time than  
24 other types of cancers?

25 A Well, going back to the first discovery of a cause of

1 cancer, which was back in the eighteenth century in the  
2 study of the frequency of skin cancer in chimney sweeps  
3 in England. The doctor who observed that mentioned  
4 that he had seen skin cancer in a number of the people  
5 who were chimney sweeps and suggested that that was due  
6 to exposure of the skin to the coal tar in chimneys.

7 Later in Germany, there was a factory that was  
8 making dyes, and a physician in that town had a number  
9 of men who worked there come to him and say, Doctor, I  
10 have blood in my urine. And he found that they had  
11 cancer of the bladder.

12 It was from that that it was recognized that  
13 another chemical could induce cancer in human beings.

14 Then a large study was made by a Dr. Hueper here  
15 in the United States who wrote a book about it, about  
16 different kinds of tumors that he felt had been  
17 reported in one way or another to be more common in  
18 people in particular industries. That focused  
19 attention on chemical agents in the environment that  
20 might be identified and controlled to prevent cancer.

21 Q The thinking being that if you had -- with the  
22 occupational studies, you had a group of people that  
23 you could identify readily who were all being exposed  
24 to a small number or a unique substance --

25 A Yes.

1 Q -- that you could readily identify. And the idea and  
2 the discussion at these types of meetings revolved  
3 around whether those substances might present risks to  
4 people involved in those occupations; is that right?

5 A That's right.

6 Q And whether or if they could present risks outside of  
7 the occupation?

8 A Right.

9 Q Okay. And you were, for lack of a better word, in the  
10 middle of all that in the '50s, right?

11 A Yes.

12 Q It must have been an exciting area of research at that  
13 particular point in time?

14 A Yes, it was.

15 Q A lot of bright minds working very hard trying to  
16 answer some of those questions?

17 A I think so.

18 Q When you got to Fairleigh -- or Fairleigh-Dickenson,  
19 right?

20 A Fairleigh-Dickenson.

21 Q Fairleigh or Fairleigh?

22 A Fairleigh.

23 Q Fairleigh-Dickenson. You began studying directly or  
24 hands-on -- the hands-on study of asbestos; is that  
25 right?

1 A Yes.  
2 Q Okay. Before that, you really hadn't studied asbestos  
3 per se except in connection with your investigation of  
4 occupational health; is that right?  
5 A Right.  
6 Q And before you got to Fairleigh-Dickenson, you had  
7 gone -- taken a trip to England or Europe to visit with  
8 individuals engaged in the study of occupational health  
9 problems abroad; is that right?  
10 A Yes.  
11 Q And you -- you talked with the people who were actually  
12 doing the hands-on research and investigation in those  
13 areas?  
14 A Yes, sir.  
15 Q And you brought your information back to this country  
16 and published it in the proceedings of the Cancer  
17 Prevention Committee?  
18 A Right.  
19 Q And you also published it in some other journals or  
20 meeting proceedings; is that right? You described the  
21 result -- let me rephrase the question.  
22 You described the results of your visit abroad in  
23 other journals and at other meetings during that time  
24 period?  
25 A I don't recall describing them at other meetings. I

1 may have, but I described them in detail when I got  
2 back from that trip, which was in the summer of 1950.  
3 And I presented them in that -- that fall at a meeting  
4 of the Cancer Prevention Committee. And then it was  
5 later published in that journal that you have.  
6 Q And your report was organized under the following  
7 headings: Shale oil, petroleum, asbestos, dye stuffs,  
8 and statistical data on occupational factors in  
9 cancer. Do you recall that?  
10 A Yes.  
11 Q And what you did was you described the evidence that  
12 you had learned or gathered from those other  
13 investigators about the relationship between each of  
14 those substances or compounds to disease in the  
15 workplace?  
16 A Right.  
17 Q And with respect to asbestos, Doctor, you had a chance  
18 to visit in England with Drs. Merewether and Gloyne; is  
19 that right?  
20 A Right.  
21 Q And Dr. Merewether was the chief inspector of factories  
22 in great Britain?  
23 A Yes, sir.  
24 Q Who had compiled a report about asbestosis that was  
25 observed in workers in England; is that right?

1 A Yes.  
2 Q And at that time asbestosis was -- and I guess it still  
3 is today -- a disease that involves scarring of the  
4 lung?  
5 A Yes.  
6 Q And is it fair to say, Doctor, that asbestosis is a  
7 disease that requires prolonged and intense exposure to  
8 asbestos?  
9 A Yes.  
10 Q And at the time in the '50s, the type of exposure that  
11 was associated with asbestosis involved people who were  
12 mining or milling raw asbestos?  
13 A In the '50s, the people I saw and reported about their  
14 findings there were seeing people who had been involved  
15 entirely in manufacturing. There was no mining of  
16 asbestos in England.  
17 Q When you say manufacturing, though, they were taking  
18 mined asbestos and turning it into asbestos-containing  
19 products?  
20 A Yes.  
21 Q They weren't people that were installing or  
22 manipulating or using asbestos-containing products?  
23 A I don't know. I believe they were involved in the  
24 manufacturing.  
25 Q And at that time, Doctor, there was some investigation

1 of the frequency with which lung cancer occurred in  
2 people who had developed asbestosis?  
3 A Yes.  
4 Q And that was the point of Dr. Merewether and  
5 Dr. Gloyne's studies?  
6 A Right.  
7 Q And that's why you went to talk to them?  
8 A Yes.  
9 Q Because you were investigating occupational factors  
10 related to the development of lung cancer?  
11 A Right.  
12 Q And the connection between lung cancer and asbestos at  
13 that time involved first the development of asbestosis  
14 and then the observation of coexistent tumors in the  
15 lung?  
16 A Yes.  
17 Q Which is another way of saying, isn't it, Doctor, that  
18 at that point in time, the doctors and the medical  
19 scientists and the researchers who were looking at the  
20 issue believed that you had to be exposed to enough  
21 asbestos to develop asbestosis before you were at risk  
22 of developing lung cancer?  
23 A Yes.  
24 Q And that's what you wrote about in these papers that  
25 were published in the Cancer Prevention Committee

1 proceedings?  
2 A Yes.  
3 Q Now, at the time, you also learned that there had been  
4 some methods and some programs put in place in England  
5 to lower the amount of asbestos these workers  
6 encountered in the workplace. Do you recall that?  
7 A Yes.  
8 Q And there was some thought that because the working  
9 conditions had improved, the frequency of asbestosis  
10 and lung cancer over there would decrease?  
11 A Yes.  
12 Q It turns out they were -- they were wrong about that,  
13 doesn't it?  
14 A No. I think they found that it was a great triumph of  
15 the industrial hygiene, not only where -- after the  
16 ventilation equipment was installed in the workplaces,  
17 the disease asbestosis was not only much less common,  
18 but it was a very different disease in that instead of  
19 being a fulminating extensive thing, it was a slowly  
20 progressive, much milder process.  
21 Q There came a time, though, later in the '60s when  
22 Dr. Selikoff and others, including yourself, started  
23 studying the use of asbestos materials by people like  
24 tradesman and installers and insulators to see if that  
25 exposure to asbestos might increase the risk of

1 developing disease?  
2 A That's right. That was done entirely by Dr. Selikoff  
3 and Dr. Hammond, not by me.  
4 Q You were familiar with the work they were doing?  
5 A I was familiar with it. But my work was experimental  
6 work, and they did epidemiological studies.  
7 Q And at the time you did your work -- at the time you  
8 went to England in the '50s to talk to these people  
9 about their work, Dr. Merewether and Dr. Gloyne,  
10 asbestos was being used in building materials and other  
11 products?  
12 A True.  
13 Q Even though people who were working with raw asbestos  
14 and manufacturing those products were developing what  
15 were considered to be occupational diseases?  
16 A Yes.  
17 Q There hadn't been any epidemiological or physiological  
18 evidence at that point in time that connected low  
19 levels of exposure to asbestos to the risk of disease?  
20 A I believe that Dr. Gloyne found that some of the  
21 patients that had combined asbestosis and lung cancer  
22 had rather mild -- what he called mild asbestosis.  
23 Some of them, of course, had extensive; some moderate;  
24 and some mild. I believe those were the categories  
25 that he divided them into.

1 Q But those were still people who were manufacturing  
2 asbestos products?  
3 A Yes.  
4 Q They weren't people who were using them or being  
5 exposed to them in schools or homes or buildings?  
6 A No.  
7 Q Now, you also wrote a paper -- or Doctor, presented a  
8 paper in 1953 at a -- it looks to me like an  
9 international conference that was called perhaps in  
10 Belgium where you wrote about an evaluation of claims  
11 for occupational factors and cancer of the lungs?  
12 A Yes, sir.  
13 Q Do you remember that?  
14 A Yes.  
15 Q Where was that? Was that overseas?  
16 A That was in Belgium. I believe it was Louvain.  
17 Q And at that meeting, you described the same type of  
18 evidence that you had learned about from Drs.  
19 Merewether and Dr. Gloyne as it related to asbestos?  
20 A Yes.  
21 Q You were writing about lung cancer and its -- the  
22 increasing incidence of lung cancer in the world?  
23 A Right.  
24 Q And you were talking about -- you were comparing and  
25 contrasting environmental and occupational factors that

1 might be responsible for it?  
2 A Yes, sir.  
3 Q The world was -- was -- the environment in which people  
4 lived at that time was changing, wasn't it? And by  
5 that I mean, there was more urbanization, more air  
6 pollution. And some thought that it was the  
7 urbanization of society that might be contributing to  
8 the increase in lung cancer?  
9 A Yes.  
10 Q And you were trying to investigate whether there was a  
11 chemical that was responsible for that or could --  
12 could confirm or -- or -- or refute that?  
13 A Yes.  
14 Q Okay. I also saw that you wrote a paper or wrote a  
15 chapter in a book in 1956 in a book entitled, Pulmonary  
16 Carcinoma. You wrote a chapter on the biology of  
17 cancer. Do you remember that?  
18 A Yes, sir.  
19 Q With special reference to cancer of the lung?  
20 A Right.  
21 Q What's the difference, if there is one, between the  
22 biology of lung cancer and the cause of lung cancer?  
23 A I don't really know how to answer that. The biology of  
24 lung cancer -- I wonder why I used that word. I did,  
25 and that's the title.

1 Well, the biology of lung cancer would mean the  
2 general study of the nature of the process, whereas the  
3 cause would be limited to the initiating factor.  
4 Q Now, in that article you didn't say anything about  
5 asbestos. The point of the article was biology, not  
6 etiology?  
7 A Yes.  
8 Q And I didn't see any reference to asbestos. Do you  
9 recall whether there --  
10 A I don't think there was there.  
11 Q There is a reference on Page 30, though, to the fact  
12 that aside from arsenic, which presumably derives from  
13 pesticides applied to tobacco crops, the chemical  
14 compounds that have been identified in smoke did not  
15 reveal or demonstrate a specific carcinogen. Do you  
16 recall that? Let me read you the sentence.  
17 The chemical compounds that have been positively  
18 identified in tobacco smoke comprise a considerable  
19 list.  
20 Let me stop there. A chemist -- at that point in  
21 time, a good chemist could have identified a number of  
22 the compounds in cigarette smoke?  
23 A Yes.  
24 Q Using chemical techniques?  
25 A Yes.

1 Q Now, have those techniques become more advanced today  
2 than they were in the '50s?  
3 A I don't know.  
4 Q Do you know if it's possible to identify more compounds  
5 in smoke today than could be identified in the '50s?  
6 A I don't know. I'm not a chemist.  
7 Q That was Dr. Kosak's job?  
8 A Yes.  
9 Q It says: The chemical compounds that have been  
10 positively identified in tobacco smoke comprise a  
11 considerable list, but no known carcinogens are among  
12 them except arsenic, which presumably derives from  
13 pesticides applied to tobacco crops.  
14 Was that the extent or the state of the knowledge  
15 or thinking that you were aware of on that subject at  
16 that time?  
17 A Yes.  
18 MR. CRICK: Could we see that article?  
19 MR. OHLEMEYER: Sure.  
20 Q And Doctor, is that the reason that researchers and  
21 investigators like you publish papers like this, is to  
22 share information with other people?  
23 A Yes.  
24 Q So that they can take your research and build upon it,  
25 or reproduce it or contradict it?

1 A Yes.  
2 Q That's just part of the scientific process?  
3 A Right.  
4 Q Then you contributed to a symposium entitled, Cancer of  
5 the Lung. And again, this looks like it happened in --  
6 somewhere in Scandinavia. Do you remember that?  
7 A I've never set foot in Scandinavia.  
8 Q All right. Maybe -- how about Switzerland? It's in a  
9 bunch of different languages. I can't just figure out  
10 where it happened. It's a symposium headed by Drs.  
11 John -- Dr. John Clemenson reprinted from ACTA, the  
12 Union Internationales Contra Cancrum, which I guess is  
13 the international union for the study of cancer.  
14 A Yes.  
15 Q The paper -- or the paper that you wrote or your  
16 contribution to the symposium is entitled, An  
17 Evaluation of Claims for Occupational Factors in Cancer  
18 of the Lungs.  
19 A Oh, that was the symposium in Louvain, Belgium.  
20 Q Same one?  
21 A Same one.  
22 Q I might just have a different reprint of the same --  
23 same article.  
24 And then finally, do you remember a scientific  
25 session of the American Cancer Society in 1953 where

1 you presented or you led a discussion on the  
2 experimental production of lung tumors and you also led  
3 a discussion on the potential occupational factors in  
4 lung cancer? This would have been probably in New  
5 York. Dr. Horn was there; Dr. Cotin; Dr. Smith;  
6 Dr. Kahan.  
7 It was after your trip to England, Doctor. Does  
8 that refresh your recollection? Because you describe  
9 it in the paper.  
10 A I don't recall that meeting you're telling me about.  
11 Q Now, let me -- let me ask you, Doctor -- I've just got  
12 a few more questions about the visit from the people  
13 from Kent, as you described it. Tell me -- tell me how  
14 that came about.  
15 A Well, I remember that it was in a building on 40th  
16 Street, I think it was, in New York where the Institute  
17 of Industrial Medicine was housed at that time. The  
18 institute was first housed in a building further  
19 downtown that was opposite Bellevue Hospital. Then we  
20 moved in the early '50s to the building on 40th Street  
21 and then later back downtown to the new medical  
22 school.  
23 But it was when we were in the building on 40th  
24 Street that I remember there was a day when Dr. Nelson,  
25 Norton Nelson, who was the director of research for the

1 institute, brought a man to my room and introduced him  
2 as vice president or maybe president -- I've forgotten  
3 what he said -- of the company that made Kent  
4 cigarettes, and that he wanted to see or would I show  
5 him the animal rooms where we were doing tests on  
6 fractions of oils, skin painting experiments; and would  
7 I also tell him about the information that I brought  
8 back from England about asbestos. And I did that.  
9 Q And you would have told him the same information that  
10 you wrote about in these papers that were written at  
11 that time?  
12 A Yes.  
13 Q These papers that we've talked about today that discuss  
14 your trip to England were written at or near the time  
15 that you made the trip?  
16 A Well, they were written after I made the trip. I  
17 presented the data in those papers almost as soon as I  
18 got back. I made a trip in the summer of 1950. I  
19 presented the data in the fall at a meeting of the --  
20 1950 -- at a meeting of the Cancer Prevention  
21 Committee. And then when the proceedings were  
22 published, they were published in the spring of 1952.  
23 The meeting that I remember from the man from --  
24 who was involved with the manufacture of Kent  
25 cigarettes was either in the early months of '52 or

1 the -- sometime during 1951.  
2 Q The papers that you wrote about your trip to England,  
3 though, were published at a time when the matter was --  
4 was fresh in your memory, certainly?  
5 A Oh, yes.  
6 Q And the publications were designed to completely or  
7 accurately convey to other members of the scientific  
8 community what you had learned?  
9 A Yes.  
10 Q And is it fair to say, Doctor, that you didn't tell the  
11 people from Kent anything more than you wrote in your  
12 papers about asbestos and its relationship to  
13 occupational health?  
14 A No. I couldn't have, because I didn't -- I didn't have  
15 any more information about it.  
16 Q And what you would have told them was that in workers  
17 who developed -- workers who were exposed to enough  
18 asbestos to develop asbestosis might be at a risk of  
19 developing lung cancer?  
20 A Yes.  
21 Q And that the only cases of lung cancer that were  
22 observed in connection with occupational exposure to  
23 asbestos occurred in people who were asbestotic or had  
24 developed asbestosis?  
25 A Yes.

1 Q And at the time back in the '50s, asbestos wasn't yet  
2 thought of as any risk to people using  
3 asbestos-containing products or installing  
4 asbestos-containing products in the workplace?  
5 MR. KLAMANN: Object to the form of the question.  
6 That calls for speculation and conjecture and -- as to  
7 what is in the minds of others or what is thought  
8 about.  
9 BY MR. OHLEMEYER:  
10 Q I'll rephrase the question. Doctor, at that time in  
11 the 1950s, no one had published any research that  
12 indicated that people who used asbestos-containing  
13 products or installed asbestos-containing products were  
14 at a risk of developing an asbestos-related disease?  
15 A I think that's true.  
16 Q Now, at that time, at the time you got the visit, you  
17 were aware or became aware that asbestos was being used  
18 in the filter material of those cigarettes?  
19 A Dr. Nelson told me that asbestos was used in the --  
20 that the man from Kent who made Kent cigarettes wanted  
21 me -- wanted to hear about the news I brought back from  
22 England about asbestos, because asbestos was used as a  
23 filter material in Kent cigarettes.  
24 Q At that time, were you aware of the fact or the use of  
25 asbestos as a filter material in other situations?

1 A Well, I knew that asbestos was used as a filter  
2 material for drugs and for liquid preparations of drugs  
3 and also for drinks. I think it was used for beer,  
4 clarifying beer. It was a common filter material.  
5 Q The properties of asbestos made it an effective filter  
6 material, as you understood it?  
7 A Yes.  
8 Q Do you think it was reasonable for a manufacturer who  
9 was using or thinking about using asbestos in a product  
10 to come talk to somebody who had collected some  
11 information on that subject from some of the leading  
12 researchers in the world?  
13 A Yes.  
14 Q Something you would recommend that a manufacturer do  
15 today?  
16 A Yes.  
17 MR. OHLEMEYER: That's all the questions I have,  
18 Doctor. Thank you.  
19 Can we take a break?  
20 A Take a break. Fine. There's -- are we off the  
21 record?  
22 (Whereupon a recess was taken at 10:23 a.m. and  
23 the deposition resumed at 10:35 a.m. this date.)  
24  
25

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## EXAMINATION

1  
2 BY MR. RUBIN:  
3 Q Dr. Smith, my name is Peter Rubin. And when you finish  
4 that sip of coffee, I have a few questions for you.  
5 Not too many, though.  
6 I'd like to draw your attention back to 1950 when  
7 you made your trip to Europe to talk with  
8 Dr. Merewether and Dr. Gloyne. Prior to that time, you  
9 were not personally aware of any studies related to the  
10 possible connection of asbestos and lung cancer; isn't  
11 that true?  
12 A I had read what Dr. Wilhelm Hueper had written about it  
13 in his book. And I had talked with Dr. Hueper about  
14 it.  
15 Q Well, it was Dr. Lanza who asked you to -- when you  
16 were in Europe to talk to Dr. Merewether and others  
17 that were involved in studies of asbestos; is that --  
18 A Yes, sir.  
19 Q And I'm looking at a -- do you remember back in 19 --  
20 it was a long time ago -- 1978, that you were deposed  
21 in New Jersey in connection with these matters? Do you  
22 have a recollection of that?  
23 A I remember a deposition in New Jersey, yes.  
24 Q And I want to read one of your answers to see if it  
25 refreshes your recollection. At that deposition -- and

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1 I'd be happy to show this to you if you don't remember  
2 it -- you said that at the time that I met with  
3 Mr. Jackson and Dr. Lanza -- and who was Mr. Jackson?  
4 A I believe Mr. Jackson was an officer of Johns-Manville.  
5 Q Okay. I was not aware of -- excuse me.  
6 You met with them prior to your trip to Europe; is  
7 that right?  
8 A Yes.  
9 Q Okay. And in that deposition, you said, at the time  
10 that I met with Mr. Jackson and Dr. Lanza, I was not  
11 aware of studies of asbestos in relation to lung  
12 cancer.  
13 MR. KLAMANN: If -- if before the witness answers,  
14 you could give us the page and line number, and then  
15 also favor us with a look at what you're reading from  
16 there.  
17 MR. RUBIN: It's Page 45 of a deposition of  
18 Dr. Smith in the matter of Helen May Jackson back in --  
19 this deposition was taken on November 28th, 1978 in  
20 Newark, New Jersey.  
21 MR. KLAMANN: Okay. Hold on just a second, Peter.  
22 MR. CRICK: What page?  
23 MR. RUBIN: Page 45.  
24 MR. KLAMANN: Which line are you looking at?  
25 MR. RUBIN: I don't have a line. It's about in

1 the middle. It's the first right after the lawyers'  
2 speeches.  
3 MR. KLAMANN: Let's see. On that one there's  
4 question numbers. Is that how that's --  
5 MR. RUBIN: Well, I don't even have that.  
6 MR. KLAMANN: Let's look real quick. It might be  
7 helpful if you read the question.  
8 BY MR. RUBIN:  
9 Q All right. Back on Page 44, Doctor, you were asked the  
10 following question: Were you aware at that time that  
11 there was a statistical increase in the number of  
12 cancers in association with asbestosis on the range of  
13 thirteen two point two percent as determined by  
14 Dr. Merewether in his factories, his reported factories  
15 in Britain in 1949?  
16 That was the question you were asked at this  
17 deposition. Then there was some colloquy between the  
18 lawyers. And then your answer was: At the time that I  
19 met with Mr. Jackson and Dr. Lanza, I was not aware of  
20 studies on asbestos in relation to lung cancer.  
21 Do you remember saying something like that back at  
22 the deposition?  
23 A I don't remember it. But if it refers back to that  
24 question that you just mentioned of the study of 13  
25 percent something in asbestos workers, I was not aware

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1 of that -- that study until they told me about it.  
2 Q All right. And -- but your answer was: I was not  
3 aware of studies on asbestos in relation to lung  
4 cancer.  
5 Was that true back at the time just before you  
6 went to Europe?  
7 A I was not aware of those studies that they were asking  
8 me about. I was aware of what Dr. Hueper had written  
9 about.  
10 Q Now, while you were in Europe, you spoke with not only  
11 Drs. Merewether and Dr. Gloyne, but also a Dr. Wyers;  
12 is that true?  
13 A Yes, sir.  
14 Q And Doctor, it's true, is it not, that it was the  
15 consensus of those doctors that the nature of the  
16 disease asbestosis as seen in England had changed so  
17 that it was less common and less severe in individuals  
18 whose employment in the industry had taken place only  
19 since 1932?  
20 MR. KLAMANN: Object to the form of the --  
21 A Yes.  
22 MR. KLAMANN: Just one second, Doctor, please. I  
23 object to the form of the question as calling for  
24 speculation and conjecture as what is in the minds of  
25 others, and lacks foundation.

1 BY MR. RUBIN:

2 Q Doctor, while you were in Europe, you had discussions  
3 with both Drs. Merewether and Gloyne and Wyers  
4 concerning their study of asbestosis?

5 A Yes.

6 Q And as a result of talking with those doctors, were you  
7 familiar with their views about what they were finding  
8 in connection with their studies of asbestosis?

9 A Yes.

10 Q And so I ask you again, Doctor -- and this is just  
11 technically for the record -- it was the consensus of  
12 those doctors, was it not, that the nature of the  
13 disease asbestosis as seen in England had changed so  
14 that it was less common and severe in individuals whose  
15 employment in the industry had taken place only since  
16 1932?

17 MR. KLAMANN: Again, I make the same objection  
18 and incorporate an additional objection on hearsay.

19 BY MR. RUBIN:

20 Q Is my statement true, Doctor?

21 A May I answer?

22 Q Yes.

23 A Yes.

24 Q And in fact, that's -- what I just said to you was what  
25 you reported in your article or presentation which was

1 ultimately published in the cancer -- from the Cancer  
2 Prevention Committee meeting, correct?

3 A Yes.

4 Q And it was also the consensus of those doctors at that  
5 time, Doctor, that a lung tumor hazard formerly existed  
6 in this industry in Great Britain, but there was no --  
7 there was no evidence to show that such a hazard  
8 continued to exist under the working conditions then  
9 prevailing; is that true?

10 MR. KLAMANN: May I have that question back? I'm  
11 sorry.

12 BY MR. RUBIN:

13 Q It was also the consensus of those doctors at the time  
14 that you met with them, Dr. Smith, that a lung tumor  
15 hazard formerly existed in this industry in Great  
16 Britain, but there was no evidence to show that such a  
17 hazard continued to exist under the working conditions  
18 then prevailing?

19 MR. KLAMANN: Same objection.

20 A That sounds familiar.

21 BY MR. RUBIN:

22 Q And in fact, what I just stated to you, Doctor, you  
23 reported at this meeting of the Cancer Prevention  
24 Committee in 1950 which -- and was subsequently  
25 published in your article, correct?

1 A Correct.

2 Q Now, there was some discussion that took place after  
3 you presented your report of your findings from your  
4 trip to Europe at the Cancer Prevention Committee  
5 meeting; is that true, Doctor?

6 A Yes.

7 Q And one of the persons present at your presentation was  
8 a Dr. Paul Cartier from Canada?

9 A Yes.

10 Q And at that meeting, Dr. Cartier stated that it seems  
11 obvious that many points would need discussion before  
12 anyone will be able to establish a causal relationship  
13 between these pathological findings and the asbestos  
14 factor?

15 A Yes.

16 Q And in response to that, later on in the discussion,  
17 you picked up on that statement and made the statement  
18 that if asbestos is carcinogenic, I would not expect to  
19 see it produce only one type of tumor. True?

20 A True.

21 Q Now, when you returned from Europe and while you were  
22 working at NYU, you did perform a study of asbestos and  
23 any link to lung cancer using a tissue transplant  
24 technique that you had developed, correct?

25 A Yes.

1 Q I'm sorry?

2 A Yes. That's right.

3 Q And the results of your work while you were at NYU were  
4 negative with regard to asbestos and cancer, correct?

5 A Yes.

6 Q Now, with regard to -- and I think it was referred to a  
7 little earlier -- the textbook called Pulmonary  
8 Carcinoma: Pathogenesis, Diagnosis, and Treatment,  
9 that you contributed to -- do you recall the questions  
10 you were asked about that earlier?

11 A I do.

12 Q There was also another chapter in that book written by  
13 Dr. Cuyler -- that's C-u-y-l-e-r -- Hammond, and Dr.  
14 Willard Machle, M-a-c-h-l-e; correct?

15 A Yes.

16 Q And Dr. Hammond was a well known statistician and  
17 epidemiologist for the American Cancer Society,  
18 correct?

19 A Yes.

20 Q And Dr. Machle was a highly regarded industrial  
21 physician at the time, correct?

22 A Yes.

23 Q And in their chapter in the same book that you  
24 contributed to, they concluded that a number of other  
25 substances have been suspected as causing lung cancer

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1 in industrial workers; for example, arsenic, asbestos,  
 2 beryllium, and other agents capable of producing  
 3 pneumoconiosis; but in their opinion, the evidence for  
 4 that causal role is insufficient. Correct?  
 5 A Yes.  
 6 Q And you agreed with that at the time, didn't you,  
 7 Doctor?  
 8 A I didn't agree really with their -- Hammond and  
 9 Machle's inclusion of asbestos as being uncertain or  
 10 controversial. To me, I was impressed with what I had  
 11 been told about the incidence of lung cancer in  
 12 asbestotics in England.  
 13 So I was not -- in my own mind at that time, I  
 14 felt there was impressive evidence for the  
 15 carcinogenicity asbestos. But I had sent the papers  
 16 that I had received since then -- or rather in 1954  
 17 and '55 -- from Knox, who was -- John Knox, who was the  
 18 medical officer of an asbestos -- for an asbestos  
 19 company in England.  
 20 And he and Richard Doll, a statistician in  
 21 England, had brought out studies showing what to me was  
 22 an impressive incidence of lung cancer in men exposed  
 23 to asbestos dust. This was in addition to the cases  
 24 that I had learned about in 1950.  
 25 I had sent the information given me by John Knox

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1 and published by Doll to Dr. Hammond, who was one of  
 2 the authors of the chapter that you're reading from.  
 3 And Hammond raised the question that those men had not  
 4 been studied carefully to -- as far as their smoking  
 5 habits, so that he put asbestos in what was regarded as  
 6 the questionable group at that time. And Machle agreed  
 7 with that.  
 8 And they -- they felt that the additional English  
 9 cases that had been reported since my 1950 trip there  
 10 were not impressive to them because they felt that  
 11 those cases might have -- should have had smoking  
 12 histories taken.  
 13 Q Doctor, the reason that I asked you that you agreed  
 14 with Dr. Hammond and Dr. Machle's statement is -- I  
 15 want to call your attention back to your deposition  
 16 back in 1978 again and see if this refreshes your  
 17 memory at all.  
 18 And I'm at Page -- Page 62, it looks like. And  
 19 bear with me for a minute. I want to read a series of  
 20 questions and answers so your answers are in context.  
 21 But there are a lot of breaks by lawyers interrupting  
 22 and making statements on the record.  
 23 You were being asked at that time about this issue  
 24 of whether or not there was a causal relation between  
 25 asbestos and cancer. And you were being referred to an

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1 article -- it looks like an editorial in the Journal of  
 2 the American Medical Association in 1949 which I  
 3 believe you said you were not familiar with at the  
 4 time, do you recall? Do you recall that?  
 5 A I don't recall.  
 6 Q Okay. Well, in reference to that article, you're asked  
 7 the question -- I'm starting at the bottom of Page  
 8 62 -- it does say, does it not, Dr. Smith, that a  
 9 causal relation between asbestosis and cancer of the  
 10 lung is supported by certain observations?  
 11 And your answer was: It says that.  
 12 And then the question -- the next question is on  
 13 the top of Page 1,220. It starts: Since some 20,000  
 14 workers are employed in the asbestos-producing  
 15 industries in this country and Canada and many  
 16 additional thousands in various asbestos-consuming  
 17 industries, increased attention to this probable  
 18 occupational hazard of cancer of the lung by the  
 19 medical profession is desirable.  
 20 And you were asked, do you agree with that  
 21 statement -- in 1949? My only question of probable --  
 22 the word probable is used there just as in the previous  
 23 article where the word recognized or suspect was used  
 24 in connection with asbestos at the time that the  
 25 article was written. And I think these are two words

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1 that we have to be aware of. They indicate that this  
 2 certainly was not an open and shut situation.  
 3 And you go on to say: I think that it might be  
 4 pertinent to recall that even much later than this --  
 5 actually in a textbook published in 1956 -- there was a  
 6 review of this information that is available here, and  
 7 then a good deal of other information that became  
 8 available later. It was a review chapter devoted to  
 9 environmental and occupational factors in cancer of the  
 10 lung. The book was called, Pulmonary Carcinoma:  
 11 Pathogenesis and Treatment.  
 12 That's the same book we've just been talking  
 13 about?  
 14 A Yes.  
 15 Q It was at that time regarded as one of the -- the, I  
 16 suppose, principal textbooks on the topic. I  
 17 contributed to -- I contributed a chapter to it on  
 18 experimental studies. And another chapter was  
 19 contributed to it on environmental and occupational  
 20 studies, a chapter that was -- well, that chapter was  
 21 written by Dr. Cuyler Hammond and Dr. Willard Machle.  
 22 Dr. Hammond is a well known -- is well known as a  
 23 statistician and epidemiologist with the American  
 24 Cancer Society. Dr. Machle -- that's what the  
 25 transcript says -- was a high -- very highly regarded,



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1 very knowledgeable industrial physician. And their  
2 conclusion of their chapter at that time in 1956 was  
3 that evidence to associate a number of substances that  
4 have been so-called suspect agents in cancer of the  
5 lung was not adequate to -- I have forgotten exactly  
6 their wording -- but they were saying the evidence was  
7 insufficient to -- and then your answer continues on  
8 Page 67 -- I could say that it was discussed because I  
9 brought it to Mr. Gross's attention. I have been one  
10 of the co-authors of the textbook, and I was familiar  
11 with things that other people had contributed to that  
12 book. And I noticed that statement, and it struck me  
13 as an interesting point that there was at that time --  
14 two very responsible students of the topic came up with  
15 a conclusion that they could not -- that they did not  
16 feel there was sufficient evidence to -- at that time  
17 in 1956 to show a causative relation between asbestos  
18 and cancer of the lungs.

19 Doctor, I'd be happy to show this to you, but I  
20 believe I've read it accurately, and I'm sure counsel  
21 would have challenged me if I hadn't.

22 Does that sound familiar to you as to things you  
23 would have said back in 1978 at your deposition?

24 A Yes.

25 Q So at that time, you certainly felt that their opinions

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1 were entitled to great respect and -- by other  
2 scientists in the field, correct?

3 A Yes.

4 Q And you at the time of your deposition were using that  
5 to answer a question about whether or not there was  
6 evidence of a causal relation between asbestos and  
7 cancer, and you referred to that article to dispute  
8 that proposition, didn't you?

9 A Yes.

10 Q Now, Doctor, would you agree with me that -- strike  
11 that.

12 You're familiar with a doctor by the name of J. C.  
13 Wagner?

14 A Yes.

15 Q And you know him to be a scientist who at least  
16 initially performed studies and research in South  
17 Africa?

18 A Yes.

19 Q And he published a study in 1960 concerning his  
20 research concerning exposure to asbestos from the  
21 mining fields in South Africa; is that true?

22 A Well, I don't know whether it was 1960. But I know  
23 that he has published about medical things of miners in  
24 South Africa and also his experimental work with  
25 animals exposed to asbestos.

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1 Q Do you recall his article published in 1960 entitled,  
2 Diffuse Pleural Mesothelioma and Asbestos Exposure in  
3 the Northwest and Cape Province? Are you familiar with  
4 that article?

5 A I rather imagine that I must have read it at some time.

6 Q Let me just show it to you and see if it refreshes your  
7 recollection as to whether or not you had read that  
8 article at any time in the past.

9 A I think I've read this.

10 Q Okay. And Doctor, would you agree with me that that  
11 was the first article published in the literature to  
12 suggest an association between asbestos and  
13 mesothelioma?

14 MR. KLAMANN: I object to the form of the  
15 question. That misstates the record of the medical  
16 literature. Lacks foundation.

17 A I simply --

18 MR. KLAMANN: Are you -- by the way, let me ask  
19 for the record, are you asking for expert opinions from  
20 this witness? Is that your point here?

21 MR. RUBIN: No. I think he did some research  
22 which I'm about to get to on mesothelioma, and I'm  
23 asking him whether that's the first article he was  
24 aware of that associated it just as a factual matter  
25 during his work.

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1 MR. KLAMANN: I see. So the question is whether  
2 or not this is the first article that he is aware of?

3 MR. RUBIN: Correct.

4 MR. KLAMANN: That was not the question that you  
5 asked. If you're reforming the question --

6 BY MR. RUBIN:

7 Q Let me reform the question, then. Doctor, you  
8 performed some research yourself in the 1960s relating  
9 to mesothelioma and asbestos; is that true?

10 A Yes.

11 Q And was Dr. Wagner's article published in 1960 the  
12 first article, epidemiological article you were aware  
13 of discussing the subject matter of asbestos and  
14 mesothelioma?

15 A I would think so.

16 Q All right. And as a result of your -- thank you,  
17 Doctor. I'm not going to ask you any questions about  
18 the article itself.

19 And Doctor, in the 1960s, you did some research  
20 and published a -- an article in 1965 entitled,  
21 Mesothelioma in Hamsters Following Intrapleural  
22 Injection of Asbestos, correct?

23 A Yes, sir.

24 Q And you did your research on mesothelioma and asbestos  
25 in 1965 because the state of medical knowledge with

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1 regard to the association between asbestos and  
2 mesothelioma was still uncertain, correct?  
3 MR. KLAMANN: Here again, I've got to ask you, are  
4 you attempting to elicit expert testimony from the  
5 witness about the state of the art or the state of  
6 medical research at the time?

7 Because if that's what you're doing, then -- then  
8 that is certainly beyond what we're tendering the  
9 witness for. And he will become your expert and we'll  
10 cross-examine him on those subjects.

11 MR. RUBIN: I am only asking him for the reasons  
12 why he undertook the research that he undertook  
13 in 19 -- which resulted in his publication in 1965 on  
14 mesothelioma in hamsters. And I was merely asking him  
15 whether one of the reasons that he undertook that  
16 research was because the association between asbestos  
17 and mesothelioma was still uncertain at that time and  
18 he wanted to pursue that research to try to determine  
19 whether or not there was in fact a causal relationship.

20 MR. KLAMANN: I don't think that is the question  
21 that you asked, so --

22 MR. RUBIN: Well, if it isn't, I'll withdraw it  
23 and I'll try to ask that question the way I just said  
24 it.

25 MR. KLAMANN: Okay.

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1 BY MR. RUBIN:

2 Q Doctor, was one of the reasons that you undertook the  
3 research that you did which resulted in your article in  
4 1965 on mesothelioma in hamsters was to try to  
5 determine whether or not there was a causal  
6 relationship between exposure to asbestos and  
7 mesothelioma?

8 A Yes.

9 Q And you also conducted some intratracheal studies of  
10 the relationship between asbestos and lung cancer in  
11 the 1960s, correct?

12 A Yes.

13 Q And one of the reasons that you undertook those studies  
14 was to try to determine whether or not there was a  
15 relationship between exposure to asbestos and the  
16 development of lung cancer, correct?

17 A Correct.

18 Q And Doctor, one last thing, and then I'm all done.  
19 Going back to your article in 1950 as -- reporting on  
20 the results of your trip to Europe, in the discussion  
21 portion of -- at the end of your article, the end of  
22 the published article, anyway, you refer to a study  
23 that had been done in Germany in 1941 by two  
24 researchers, Nordmann and -- I'd not sure how to  
25 pronounce this -- Sorge, I guess -- S-o-r-g-e?

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1 A Yes, sir.

2 Q Do you remember that? And you became aware of some of  
3 the underlying data relating to their study; isn't that  
4 true?

5 A Yes.

6 Q And there had been some reports that 20 percent of  
7 their mice developed lung cancer; is that true?

8 A I remember what you're getting at, yes.

9 Q Yes. And you found out that 20 percent was two mice,  
10 correct?

11 A Right.

12 Q And you've also found out that one of those mice had a  
13 type of tumor that occurs commonly as a spontaneous  
14 growth in mice, correct?

15 A Yes, sir.

16 Q And the other mouse that had -- reported to have lung  
17 cancer, a squamous cell lung cancer, your view of the  
18 photograph indicated to you that it was only a squamous  
19 cell metaplasia, correct?

20 A Correct. I remember this.

21 MR. RUBIN: Thank you, Doctor. That's all I  
22 have.

23 MR. WISNIEWSKI: I don't have any questions.

24 MR. MCELANEY: Let me ask -- Mr. Caretti, do you  
25 have any?

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1 MR. CARETTI: No, I have no questions for  
2 Dr. Smith.

3 MR. MCELANEY: Okay. Doctor, let me just move  
4 down to get to the microphone, okay?

# EXAMINATION

6 BY MR. MCELANEY:

7 Q Dr. Smith, my name is Andy McElaney. I represent a  
8 defendant in the lawsuit brought on behalf of Nelson  
9 Sorise.

10 Do you understand that you are here testifying in  
11 a lawsuit involving Nelson Sorise in Detroit?

12 A Yes.

13 Q And you understand that Mr. Crick and Mr. Klamann  
14 represent the plaintiffs in that lawsuit?

15 A Yes.

16 Q You met with Mr. Crick for about 14 hours before the  
17 deposition; is that right?

18 A I met with Mr. Crick yesterday afternoon and then  
19 previously in -- last fall.

20 Q Okay. I guess you had earlier said that you had  
21 charged Mr. Crick \$2,100 at the rate of \$150 an hour.  
22 That's how I got the 14 hours.

23 A Oh, I see. Right.

24 Q So you had spent about 14 hours with Mr. Crick last  
25 fall; is that it?

1 A Yes.  
2 Q And did Mr. Crick show you any documents, any writings  
3 at all?  
4 A He examined documents that I had, and he talked about  
5 some of those. He didn't bring documents of his own.  
6 Q Okay. The only documents of his own that he showed you  
7 were the documents he showed you yesterday; is that  
8 it? You had referred earlier to a Life Magazine  
9 article and a photo?  
10 A I think so, yes.  
11 Q Okay. And describe for me the nature of the documents  
12 that -- of yours that Mr. Crick examined.  
13 A Oh. They were records of my work at New York  
14 University and records of my research on cancer in  
15 general.  
16 Q Okay. And did Mr. Crick take copies of those  
17 documents?  
18 A Yes.  
19 Q That was back in the fall?  
20 A Yes.  
21 Q Is there anything in those documents which did not  
22 appear in your subsequent publications?  
23 A Well, there's a great deal of specific data on  
24 experimental studies that was reported in the progress  
25 reports from New York University on experiments on

1 cigarette smoke condensate.  
2 Now, I published some of that data. There was a  
3 great deal more that was in detail that was in the  
4 progress reports, but the top of the news was in the  
5 publications.  
6 Q Okay. Is it fair to say that the unpublished detail  
7 data was consistent with the top of the news that was  
8 published?  
9 A Yes.  
10 Q Have you met with Mr. Klamann before today's  
11 deposition?  
12 A No. I talked with Mr. Klamann on the telephone  
13 about -- oh, perhaps a couple weeks ago. Mr. Crick had  
14 called me and he put Mr. Klamann on. That was the  
15 first time that I came in contact with Mr. Klamann.  
16 Q And what was the subject matter of that discussion?  
17 A This deposition and when it would take place.  
18 Q And you understand that you're here to testify about  
19 the work you did regarding asbestos research and any  
20 conversations you had with people from Kent? Is that  
21 your understanding?  
22 A Yes.  
23 Q Okay. And you have told us now everything you have  
24 told Mr. Crick about your conversation with the people  
25 with Kent; is that right?

1 MR. KLAMANN: Object to the form.  
2 A Beg pardon?  
3 MR. KLAMANN: That's just an objection, Doctor,  
4 that I'm making for the record.  
5 A Would you ask -- restate that question.  
6 BY MR. MCELANEY:  
7 Q Sure. I'd be happy to. Have you told us at your  
8 deposition today everything you've previously told  
9 Mr. Crick about your conversations with people from  
10 Kent?  
11 MR. KLAMANN: Same objection.  
12 A Well --  
13 MR. KLAMANN: He hasn't been asked that specific  
14 question in the all-encompassing way that you are now  
15 asking it, so I object to it as confusing and  
16 misleading to the witness.  
17 A I have said earlier today that I had talked to the  
18 representative from Kent about the information that I  
19 had brought back from England. And I would have talked  
20 with him only about the data that is published in the  
21 proceedings of the Cancer Prevention Committee that had  
22 been -- that was cited.  
23 Now, I don't know exactly what I said this morning  
24 as to the specific statements from that, but they would  
25 all be in that material. And I -- there was nothing

1 further that I had to say to Mr. Crick that I could  
2 have said to Mr. -- I didn't -- I don't remember the  
3 name of the gentleman that I spoke with from Kent.  
4 BY MR. MCELANEY:  
5 Q Have you ever smoked cigarettes, Dr. Smith?  
6 A Yes.  
7 Q What kind did you smoke?  
8 A Oh, I smoked a variety of different kinds of cigarettes  
9 at one time or another. But I never smoked extensively  
10 cigarettes because I smoke a pipe.  
11 Q For how many years did you do research with asbestos?  
12 A Well, I guess I started on it -- if you want to take  
13 the 1950 trip as my introduction to it. I continued to  
14 work on research on asbestos until I retired, which was  
15 in 1983. So the answer would be 33 years.  
16 Q And a final question, Doctor. Have you ever used a  
17 Gooch filter?  
18 A A which?  
19 Q A Gooch filter?  
20 A I don't know that word.  
21 MR. MCELANEY: Okay. That's all I have. Thank  
22 you.  
23 FURTHER EXAMINATION  
24 BY MR. OHLEMEYER:  
25 Q I've just one, Doctor. I want to clear up something

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1 that I said earlier. I think I misspoke. You remember  
2 we were talking about the paper -- the biology of  
3 cancer that appeared in Pulmonary Carcinoma?

4 A Yes.

5 Q I suggested that I had reviewed it and not seen a  
6 reference to asbestos. I was incorrect. I've reviewed  
7 it again, and there is actually a reference on Page 15  
8 to asbestos that says: Asbestos produces a  
9 pneumoconiosis in rats, rabbits, and guinea pigs,  
10 resembling that which it causes in man, but it fails to  
11 do so in mice or dogs.

12 And then you cite Drs. Vorwald and Pratt for that  
13 proposition.

14 Am I correct, Doctor, that pneumoconiosis -- that  
15 asbestosis is the pneumoconiosis that you're discussing  
16 in that statement?

17 A Yes.

18 MR. OHLEMEYER: Okay. Thank you very much.

19 MR. KLAMANN: Is everybody done? I just want this  
20 record to be clear in the event that this particular  
21 deposition becomes an issue in other proceedings that  
22 are not the Sorise proceedings, that the issues in the  
23 Sorise have to do with mesothelioma caused by asbestos,  
24 and the interests of the parties defending the  
25 deposition -- the plaintiffs, Mr. Crick, and myself --

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1 are related to and limited to those issues.

2 And therefore, it would be inappropriate, I  
3 believe, to attempt to use the testimony or transcript  
4 or even the videotape of the deposition in other  
5 proceedings where the issues are different and the  
6 interest of the parties may be entirely different  
7 than -- than here where we're talking about  
8 mesothelioma and its relationship to asbestos.

9 I did not object to some of the questions that  
10 strayed rather far afield of those issues in light of  
11 the fact that objections as to relevance are  
12 preserved.

13 Nonetheless, I want to make it clear that the  
14 issues in this case are as I've stated what they are,  
15 and they should not be construed otherwise to allow the  
16 use of this transcript or deposition in proceedings  
17 where those are not the issues, and the interests of  
18 the parties in defending the deposition, making  
19 objections, or otherwise inquiring of the witness would  
20 be quite different than they are here in view of the  
21 issues in this case.

22 MR. OHLEMEYER: Let me just say, though -- this  
23 doesn't need to be on the video -- does not need to be  
24 on the video. Well, if the video -- was the video on?

25 MR. KLAMANN: Yes, it was.

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1 MR. OHLEMEYER: Okay. Turn it back on. I'm  
2 sorry. Are we on?

3 FURTHER EXAMINATION

4 BY MR. OHLEMEYER:

5 Q Doctor, let me ask you this as a question in connection  
6 with Mr. Klamann's objection. Does -- would your  
7 recollection of the facts and your ability to describe  
8 those facts to us that you have told us about today  
9 depend upon what type of case or what type of lawsuit  
10 was involved or caused you to come today to talk about  
11 those facts?

12 Let me rephrase the question. You have tried to  
13 describe the facts to the best of your ability today to  
14 us as you remember them from that period of time,  
15 right?

16 A Yes.

17 Q And that recollection is not dependent upon what type  
18 of lawsuit brings you here today to talk about those  
19 facts, is it?

20 A No.

21 MR. OHLEMEYER: Okay. That's all I have.

22 MR. KLAMANN: Well, except for the fact in  
23 fairness to the witness that if the lawsuit is  
24 different and the issues involve other matters, it may  
25 very well be that the witness would review documents

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1 that would refresh his recollection of 30 or 40 years  
2 ago that he has not had an opportunity to do for this  
3 deposition. And therefore, his recollection of matters  
4 that were gone into generally that have nothing to do  
5 with this case may very well be affected by his  
6 opportunity to review those documents and otherwise  
7 prepare for the deposition.

8 And that certainly would be true. We can all  
9 stipulate to that.

10 MR. OHLEMEYER: I understand. I understand the  
11 nature of your objection. I understand.

12 MR. KLAMANN: Okay. Off the record.

13 \* \* \* \* \*

14 (It was indicated that the deponent waived reading  
15 and signing of the deposition transcript.)

16 (Completed this deposition at 11:15 a.m. this  
17 date.)  
18  
19  
20  
21  
22  
23  
24  
25

## 1 CERTIFICATE

2

3 I, Michelle A. Costigan, Notary Public, in and for the  
4 State of Maine, hereby certify that on the 7th day of May,  
5 1997, personally appeared before me DR. WILLIAM SMITH, the  
6 within-named deponent, who was sworn to testify the truth,  
7 the whole truth, and nothing but the truth in the  
8 above-named cause of action.

9 And that thereupon this deposition was stenographically  
10 reported by me and later reduced to typewriting by means of  
11 Computer-Aided Transcription under my direction, and the  
12 foregoing is a full and true record of the testimony given  
13 by the deponent.

14 I further certify that the adverse party was duly  
15 notified according to law to attend at the taking of said  
16 deposition and did attend.

17 I further certify that I am a disinterested person in  
18 the event or outcome of the above-named cause of action.

19 IN WITNESS WHEREOF, I subscribe my hand and affix my  
20 seal this 15th day of May, 1997.

21

22

*Michelle A. Costigan*  
Michelle A. Costigan

23

Notary Public

24

My commission expires February 12, 2002.

25

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
Case No. 95-521228-NP  
Hon. Robert J. Colombo, Jr.

NELSON SORISE and  
DOLORES SORISE,  
Plaintiffs

vs.

20TH CENTURY GLOVE CORP.  
OF TEXAS, et al.,  
Defendants

COPY

VIDEOTAPE DEPOSITION OF: DR. WILLIAM SMITH

BEFORE: Michelle A. Costigan, Notary Public, at the  
Marriott Hotel, 308 Godfrey Blvd., Bangor, Maine, on  
Wednesday, May 7, 1997, beginning at 12:30 p.m.

APPEARANCES

John Klamann, Esq.	
Steven Crick, Esq.	For the Plaintiffs
Mark A. Wisniewski, Esq.	For Defendant Owens Corning
Peter J. Rubin, Esq.	For Defendant Owens Illinois
William S. Ohlemeyer, Esq.	
Roger C. Geary, Esq.	For Defendant Lorillard
Andrew J. McElaney, Jr., Esq.	For Defendant Hollingsworth & Vose Company
Caretti, Esq. (via telephone)	For Defendant MACCO

DON THOMPSON & ASSOCIATES

Court Reporting

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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
Case No. 95-521228-NP  
Hon. Robert J. Colombo, Jr.

NELSON MORRIS and  
DOLORES MORRIS  
Plaintiffs

OWENS CORNING FIBER CORP.  
Defendants

DEPOSITION OF: DR. WILLIAM SMITH

Before: Michelle A. Costigan, Notary Public, at the  
Marriott Hotel, 308 Godfrey Blvd., Bangor, Maine, on  
Wednesday, May 19, 1997, beginning at 12:30 p.m.

#### APPEARANCES

John Klamann, Esq.	For the Plaintiffs
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(via telephone)	
DON THOMPSON & ASSOCIATES	
Court Reporting	

(This deposition was taken before Michelle A. Costigan, Notary Public, at the Marriott Hotel, 308 Godfrey Blvd., Bangor, Maine, on Wednesday, May 7, 1997, beginning at 12:30 p.m.)

\* \* \*

MR. WISNIEWSKI: This is Mark Wisniewski on behalf of Owens Corning. It's my understanding with a conversation with Mr. Klamann that there's a potential that this witness is being -- or may be called at trial, but he is not being called as a witness against Owens Corning, so I'm going to hash out those issues with Mr. McClain.

But I will just put my objection on the record now that if certain defendants are not in this case, if this witness is a factual witness, that this deposition not be allowed since this witness is not a witness against Owens Corning.

MR. KLAMANN: Well, as I mentioned to Mark off the record, I really -- I understand his objection, but I'm not in a position to make any stipulation as to who the witness' testimony applies to or to what effect. I'd have to leave that to Mr. McClain, who I'm sure will work on that issue with -- with Mark as appropriate.

MR. WISNIEWSKI: I guess my formal objection would

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DEPOSITION: DR. WILLIAM SMITH

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be then relevancy and, I guess, personal -- witness lacks personal knowledge as to any issues involving Owens Corning as a factual witness.

\* \* \*

THE REPORTER: I'm going to swear you in again, if you could raise your right hand.

Do you swear the testimony you're about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

DR. SMITH: I do.

\* \* \*

DR. WILLIAM SMITH, called, after having been duly sworn, on his oath deposes and says as follows:

#### EXAMINATION

BY MR. KLAMANN:

Q Good afternoon, Dr. Smith.

A Good afternoon.

Q Dr. Smith, would you introduce yourself, please, to the court and jury?

A My name is William Smith. I'm 83 years old. I graduated from medical school in 1938, and I have -- my work has all been research work in bacteriology and pathology.

Q Doctor, we've asked you to come today for a videotape of your testimony, and that testimony is being taken



1 here in the state of Maine; am I right?  
 2 A Yes.  
 3 Q Which is where you live?  
 4 A Yes.  
 5 Q And Doctor, you mentioned that your work in the past  
 6 has been all research work?  
 7 A Yes.  
 8 Q And I wanted to ask you some very quick questions about  
 9 that and then we'll talk in more detail. Did the  
 10 research work that you did in the 1950s have anything  
 11 to do with the causes of cancer?  
 12 A Yes.  
 13 Q Did the research work that you did in the 1950s touch  
 14 upon the health effects of asbestos?  
 15 A Yes.  
 16 Q And have you ever had occasion to discuss those health  
 17 effects of asbestos with the makers of Kent cigarettes?  
 18 A Yes.  
 19 Q When was that, Doctor?  
 20 A It would have been in -- I believe in early 1952 or in  
 21 1951.  
 22 Q All right, sir. And do you recall what you told them;  
 23 that is to say the representatives of the makers of  
 24 Kent cigarettes?  
 25 MR. MCELANEY: Objection, hearsay.

1 BY MR. KLAMANN:  
 2 Q Go ahead, Doctor.  
 3 A I didn't -- I hesitate to say them. I talked with one  
 4 man, as I remember.  
 5 Q All right, sir. And do you recall what you told him?  
 6 A I had visited a number of investigators in England in  
 7 the summer of 1950, men that had worked on asbestosis  
 8 and had discussed with me -- presented with me -- to me  
 9 the data that they had assembled on lung cancer in  
 10 relation to asbestosis.  
 11 And I brought that material back and presented it  
 12 at a meeting of the Cancer Prevention Committee in the  
 13 fall of 1950. And the proceedings of that meeting,  
 14 along with the other meetings of that committee, were  
 15 published in the spring of '52, so I don't think I  
 16 would have had the published document to hand on to the  
 17 man from -- who I understood was making Kent  
 18 cigarettes, but I described to him the information that  
 19 was in it.  
 20 Q And did that information have to do with the subject of  
 21 the health effects of asbestos, Doctor?  
 22 A Yes.  
 23 Q Doctor, following your description of that information  
 24 to the man from Kent, did you make any recommendations  
 25 to him?

1 A Well, I mentioned that I was impressed with the  
 2 findings that were available in England and had been  
 3 reported to me there. I mentioned that that was --  
 4 there were others who questioned those findings and  
 5 presented their questions in the discussion, which was  
 6 later published with that paper, so that it was a  
 7 controversial question at that time.  
 8 However, I said that since there was some evidence  
 9 that asbestos was a carcinogen, I said that I felt it  
 10 would be prudent if it were -- instead of using it as a  
 11 filter in cigarettes, that it would be wise to move to  
 12 another material, some other filter material.  
 13 MR. MCELANEY: Motion to strike as non-responsive  
 14 to the question to the extent the answer was not  
 15 anticipated. Objection on the -- and motion to strike  
 16 on the grounds of hearsay and lack of foundation.  
 17 MR. RUBIN: Is the motion by one -- or objection  
 18 by one an objection by all?  
 19 MR. KLAMANN: Fair enough.  
 20 MR. RUBIN: Okay. Thank you.  
 21 BY MR. KLAMANN:  
 22 Q Doctor, I want to take you back a little ways and talk  
 23 about your background beginning with your education.  
 24 Would you tell the jury what your education has been?  
 25 A I graduated as an AB; majored in biology at Princeton

1 University in 1934. And then I graduated with an M.D.  
 2 in 1938 from Johns Hopkins School of Medicine.  
 3 Q And following your graduation from medical school at  
 4 Johns Hopkins, did you then serve a fellowship in  
 5 medicine?  
 6 A I went into bacteriology at the Harvard Medical  
 7 School. I was assistant in bacteriology there, and  
 8 then I was assistant in pathology at the Rockefeller  
 9 Institute for medical research in New York.  
 10 Q Doctor, that would have been the Rockefeller Institute  
 11 for cancer research?  
 12 A For medical research. I was there -- I was at the  
 13 Harvard Medical School for four years, I was at the  
 14 Rockefeller Institute for four years, and then I moved  
 15 to Sloan-Kettering Institute for Cancer Research for  
 16 two years, and from there to New York University.  
 17 Q What was the nature of your research work at  
 18 Sloan-Kettering?  
 19 A Well, I was asked to handle the program for tests of  
 20 high boiling petroleum fractions from a new cracking  
 21 process. I was asked to test them for carcinogenicity  
 22 on animals.  
 23 Q Did there come a time, Dr. Smith, where your research  
 24 efforts were moved from the Sloan-Kettering Institute  
 25 for Cancer Research to the New York University

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1 Institute for Industrial Medicine?

2 A Yes.

3 Q When did that occur, sir?

4 A 1949.

5 Q And could you summarize for the jury, please, the type

6 of work then that you became involved with at the

7 New York University Institute for Industrial Medicine?

8 A Yes. The program for studying high boiling oils for

9 carcinogenicity was a program that was developed by the

10 Standard Oil Company of New Jersey. And they had

11 funded the program at Sloan-Kettering Institute, which

12 was part of Memorial Hospital Cancer Center and was

13 concerned primarily with chemotherapy of cancer, so

14 that the work on identification and control of

15 environmental carcinogens fitted more directly into the

16 program for the new Institute of Industrial Medicine at

17 New York University, therefore, it was transferred, and

18 me with it, to New York University's Institute of

19 Industrial Medicine.

20 Q Doctor, I'd like to take you back a year or two prior

21 to that, to 1948, and ask you if you can describe for

22 us, please, what the Cancer Prevention Committee was.

23 A Well, that was a committee set up at Sloan-Kettering

24 with the purpose of bringing together people from

25 different backgrounds who might each contribute

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1 something toward the purpose of identification and

2 control of carcinogens in the environment. This meant

3 people from industry; people from academic

4 institutions; research people who did, let's say, as I

5 was doing, animal studies, testing materials on

6 animals.

7 It would involve the engineers in different

8 companies. For example, in the oil work, the fractions

9 of oil were made by the chemists in the company who

10 knew what they were doing and could send me the

11 different fractions with the object of trying to

12 identify where the active carcinogenic material was.

13 And by the test of many different fractions, we found

14 that it was present in a very small percentage of the

15 yield of a cracking operation. That was an useful

16 industrial hygiene thing to demonstrate.

17 The Cancer Prevention Committee then was intended

18 to bring together people from academia, the engineers

19 in companies that were interested in one phase or

20 another with the work, government agency people. That

21 was the Cancer Prevention Committee.

22 Q Doctor, did the Cancer Prevention Committee meet on a

23 regular basis?

24 A Not on a regular basis, but we had a good number of

25 meetings. And many of them were -- the proceedings

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1 were published in the -- in the AMA Archives of

2 Industrial Hygiene and Occupational Medicine.

3 Q Would that be a publication of the American Medical

4 Association?

5 A It is, yes.

6 Q And Doctor, were these meetings attended from time to

7 time by representatives from industry, for example?

8 A Yes.

9 Q And by way of further example, were the meetings --

10 were any of the meetings attended by a Dr. Cartier from

11 the asbestos industry?

12 A Yes.

13 MR. RUBIN: I object to the reference of the

14 asbestos industry without an identification of who

15 Dr. Cartier was associated with.

16 BY MR. KLAMANN:

17 Q Were the meetings of the Cancer Prevention Committee

18 ever attended by Dr. Cartier, for example?

19 A May I answer this?

20 Q Yes, sir.

21 A Yes.

22 Q And who was Dr. Cartier?

23 A Dr. Cartier was a medical officer for a clinic that saw

24 the men in -- and who worked in an asbestos mining

25 operation in Canada.

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1 Q All right, sir. And you mentioned that the membership

2 of the -- of the Cancer Prevention Committee was drawn

3 from industry and medical science and other quarters.

4 Did it also include persons from around the world and

5 not just from the United States?

6 A Yes. We had responding members in England, France,

7 Germany.

8 Q Did the membership also include Dr. G.W.H. Scheppers,

9 Dr. Garrett Scheppers, from the Syncopes Medical Bureau

10 in Johannesburg, South Africa?

11 A That I don't recall. I know Scheppers, but whether he

12 was -- I believe he attended some of the meetings.

13 Q Doctor, who was the founder of the Cancer Prevention

14 Committee?

15 A I was.

16 Q And how was the name Cancer Prevention Committee

17 chosen?

18 A Because of the purpose of the committee. The purpose

19 was to identify agents that could cause cancer and

20 prevent exposure to them.

21 Q And is that the reason why the word prevention --

22 A Yes.

23 Q -- was included in the title?

24 A Yes.

25 Q Now, Doctor, after you came to New York University, did

1 you have occasion to consider as a part of your  
2 research the health effects of asbestos?  
3 A Yes.  
4 Q And would you tell the jury, please, how that came  
5 about?  
6 A Well, it was in 1950 that I made the trip to England to  
7 talk with people there who had been working on the  
8 epidemiology and also the pathology of cancer in men  
9 with dust diseases of the lungs.  
10 Q Doctor, can I stop you right there and just ask you to  
11 tell us what epidemiology is?  
12 A Epidemiology would be the study of the incidence of any  
13 particular type of disease in human beings in groups of  
14 people.  
15 Q So your trip to England then was to visit with  
16 researchers who were looking into the epidemiology and  
17 the biology, I think you may have mentioned, of dust  
18 diseases?  
19 MR. McELANEY: Objection to the form. You may  
20 answer.  
21 BY MR. KLAMANN:  
22 Q So that we understand what epidemiology is.  
23 A Yes.  
24 Q And what did you do and what did you learn while you  
25 were on that trip?

1 A Well, I talked first with the chief inspector of  
2 factories, who was a Dr. Merewether, and he described  
3 cases of coexistent lung cancer and asbestosis in I  
4 believe it was about 17 -- no, some 30 people that had  
5 been registered with him during the maybe 20 years  
6 preceding.  
7 And then I also saw a Dr. Gloyne, who was a  
8 pathologist and had studied the lungs of people with  
9 pneumoconiosis that were -- lungs that were -- deaths  
10 that were recorded with some official agency there for  
11 pneumoconiosis. And he told me that among the people  
12 with asbestosis, he found lung cancer in I think it was  
13 about 13 percent of their lungs; whereas in the people  
14 with silicosis, there was only one-and-a-fraction  
15 percent of the lungs that had lung cancer.  
16 He was impressed with that almost ten times  
17 greater incidence in the asbestotics.  
18 Q And did that make any impression upon you?  
19 A Yes.  
20 Q What was the impression upon you?  
21 MR. McELANEY: Objection. You may answer.  
22 A Well, I was impressed by what he found, the differences  
23 in the frequency of cancer in the lungs of asbestotics  
24 as compared to silicotics. I concluded from that, that  
25 it was not the fibrosis that caused the cancer, but

1 that the -- there must be something about the asbestos  
2 fiber that was carcinogenic.  
3 BY MR. KLAMANN:  
4 Q And Doctor, when you speak of fibrosis, is that  
5 asbestosis?  
6 A Yes, and silicosis.  
7 Q All right. Did you meet with anyone else besides --  
8 oh, by the way, I wanted to ask you was Dr. Merewether,  
9 Dr. E.R.A. Merewether --  
10 A That's right.  
11 Q -- one and the same?  
12 Now, I wanted to ask you then whether or not you  
13 met with anyone else while you were in England on the  
14 subject of asbestos besides Dr. Merewether?  
15 A I met with a Dr. King who had done some animal studies,  
16 intratracheal injection of several preparations of  
17 asbestos into rat lungs. He described his findings.  
18 He got no tumors that he could attribute to the  
19 asbestos.  
20 Q Did you --  
21 A As I recall, he had two -- two of his animals had  
22 tumors in the lungs, but one was a type that occurred  
23 so commonly spontaneously in rats that it was not  
24 impressive. The other one, I don't recall what that  
25 was.

1 Q Did you ever meet with a fellow by the name of Hinson  
2 while you were over there?  
3 A Yes, I did.  
4 Q And who was Mr. Hinson?  
5 A Well, I can say that he was a doctor that worked  
6 with -- who had been active in study of asbestosis.  
7 Q Was he involved with the Dr. Merewether and the others  
8 with respect to the cancer work?  
9 A Yes, I think he was. I believe it was Dr. Hinson who  
10 later sent me sections of lungs from about half a dozen  
11 men who had died with asbestosis plus lung cancer.  
12 Q Now, I wanted to ask you about those six cases that  
13 Dr. Hinson had sent you.  
14 MR. OHLEMEYER: Excuse me, Counsel. Can we get a  
15 time frame on that?  
16 MR. KLAMANN: I'll get to that.  
17 MR. OHLEMEYER: Well, I guess my --  
18 MR. KLAMANN: Or if you have a question that you  
19 want to ask, you can do it when it's your turn to.  
20 MR. OHLEMEYER: I have an objection as to lack of  
21 foundation, and we need some foundation as to when this  
22 occurred.  
23 BY MR. KLAMANN:  
24 Q In the six cases that Dr. Hinson had sent you, were  
25 they all lung cancers or were some of them other forms

1 of cancer, such as mesothelioma or other cancers?

2 MR. RUBIN: Objection.

3 MR. OHLEMEYER: Same objection.

4 MCELANEY: Objection. Leading as well.

5 MR. KLAMANN: I'll rephrase it.

6 MCELANEY: It misstates the testimony.

7 BY MR. KLAMANN:

8 Q In the six cases that Dr. Hinson sent you, what kinds  
9 of cancers were involved?

10 MR. OHLEMEYER: Same objection as to lack of  
11 foundation as to when or what time period in which  
12 we're inquiring.

13 MR. MCELANEY: I'm also objecting on a lack of  
14 foundation and misstatement of the testimony.

15 BY MR. KLAMANN:

16 Q Go ahead

17 A Well, the lungs would have been -- they were sectioned  
18 pieces of -- pieces of lungs. And we made our own  
19 histological sections from those pieces. They would  
20 have been sent over sometime after my visit to  
21 England. I would assume that they reached us sometime  
22 within 1951.

23 Q That was going to be my next question, as to when  
24 you -- when you got them. But you say you received  
25 them sometime shortly after your visit --

1 A Yes.

2 Q -- with the doctors in England?

3 MR. RUBIN: Objection.

4 MR. OHLEMEYER: Objection.

5 MR. MCELANEY: Objection. Misstates the  
6 testimony.

7 BY MR. KLAMANN:

8 Q At least by 1951?

9 MR. RUBIN: Objection.

10 MR. OHLEMEYER: Objection.

11 MR. MCELANEY: Objection, leading.

12 BY MR. KLAMANN:

13 Q Go ahead. Go ahead, Doctor. You can answer that  
14 question.

15 A Well, they were studied by -- they -- yes, they arrived  
16 sometime I guess it would have been in 1951, and they  
17 were studied by Dr. Kushner, Dr. Marvin Kushner.

18 Q And --

19 MR. RUBIN: Move to strike, guessing.

20 BY MR. KLAMANN:

21 Q Doctor, what kinds of cancers were involved in the six  
22 specimens that were sent to you by Dr. Hinson?

23 MR. RUBIN: Objection. Lack of foundation.

24 MR. OHLEMEYER: Objection. Lack of foundation.

25 A Well, as I recall, there were several bronchogenic

1 carcinomas, several that were squamous cell carcinomas,  
2 and then there were several alveolar cell  
3 adenocarcinomas. Those alveolar cell carcinomas  
4 sometimes can be diagnosed as mesotheliomas.

5 MR. RUBIN: I move to strike that last part as not  
6 responsive to the question as to what the types of  
7 cancers were in the six slides.

8 BY MR. KLAMANN:

9 Q Were the six samples that were sent to you by  
10 Dr. Hinson evaluated at your laboratories at NYU?

11 A Yes.

12 MR. MCELANEY: I'll object to the form of the  
13 question as misstating the testimony.

14 BY MR. KLAMANN:

15 Q And did the laboratories at NYU come to its own  
16 conclusion as to whether or not mesotheliomas were  
17 included among the tissue, the six tissue samples that  
18 were sent to you?

19 MR. MCELANEY: Objection.

20 MR. RUBIN: Objection.

21 MR. OHLEMEYER: Objection. Lack of foundation.  
22 Calling for expert opinion from a witness who has not  
23 been listed nor disclosed as an expert despite the fact  
24 you've been aware of his existence, identity, and  
25 location for about a year.

1 MR. KLAMANN: I'm merely asking for the facts.

2 MR. OHLEMEYER: And if -- Mr. Klamann, if you'd  
3 like facts, then you need more foundation. And that's  
4 the basis of my objection.

5 BY MR. KLAMANN:

6 Q Doctor, you may answer.

7 MR. MCELANEY: Hearsay as well.

8 BY MR. KLAMANN:

9 Q Would you like me to repeat the question, Doctor?

10 A If you could tell me what I may answer.

11 Q You can answer the question.

12 A All right. What is the question?

13 Q Subject to these objections, so we don't have an  
14 interruption again, that have been made, how many  
15 mesotheliomas were found among the six tissue samples  
16 that were sent to you? By the way, they were sent to  
17 you; am I right?

18 A They were, yes.

19 Q How many mesotheliomas, based upon the independent  
20 evaluation at your labs at NYU were found among these  
21 six samples that were sent by Dr. Hinson?

22 A As I recall, among those six there were two that I  
23 believe Dr. Hinson's diagnosis had been alveolar cell  
24 adenocarcinoma. Now, that term -- tumors of that sort  
25 sometimes are considered to be mesotheliomas. I am not

Page 21

1 a certified pathologist, and so I handed this material  
2 along to the two pathologists that I had worked with.  
3 One was Dr. Sunderland from Memorial Hospital, and the  
4 or was Dr. Kushner at New York University.

5 And they did the pathology studies on them.  
6 Whether they ever reported that, I simply don't know.  
7 I don't know whether there's any written account of  
8 what they -- what they found.

9 Q You did discuss the findings with them, though?

10 A I did.

11 Q And what was your understanding of the types of  
12 malignancy that were present based upon the evaluation  
13 at NYU?

14 A My understanding was that there were the --

15 MR. MCELANEY: Objection.

16 A -- four of them were bronchogenic carcinomas, and that  
17 two of them were more distally located in the -- in the  
18 lung, further out toward the pleura. Those would be  
19 the two that I've mentioned as a question of whether to  
20 call them alveolar cell adenocarcinomas or to call them  
21 mesotheliomas.

22 Q Were mesotheliomas sometimes referred to as alveolar  
23 cell carcinomas in the early 1950s?

24 MR. RUBIN: Objection.  
25

Page 22

1 BY MR. KLAMANN:

2 Q Go ahead, sir. You can answer.

3 A I believe that there was debate among pathologists  
4 whether some cases of alveolar cells -- so-called  
5 alveolar cell carcinoma, adenocarcinoma -- might be  
6 really called mesotheliomas.

7 Q All right. Now, Doctor, when you returned to NYU from  
8 your travels in England following your visits with  
9 Dr. Merewether and others, did you have anything to do  
10 with research work that was underway at NYU concerning  
11 cigarettes?

12 A Yes.

13 Q What was the nature of your work involving research on  
14 cigarettes?

15 A Well, I had met with a group of men from cigarette  
16 manufacturing companies. Dr. Rhoads, who was the  
17 director of Sloan-Kettering, invited me to come up and  
18 meet there with several men from cigarette  
19 manufacturing companies; and then later met with the  
20 same group at New York University.

21 And it was decided to carry out tests for possible  
22 carcinogenicity of cigarette smoke condensate in  
23 animals. And the easiest way to do that since we had  
24 carried out the tests of many fractions of petroleum --  
25 the easiest way to do that was to follow the experience

Page 23

1 we had with the petroleum fractions and apply the  
2 cigarette smoke condensates to the skin of mice looking  
3 for whether it would or would not induce tumors.

4 Q And Doctor, in the course of your work, did you ever  
5 have any contact with representatives of the cigarette  
6 companies?

7 MR. MCELANEY: Objection.

8 A See, I don't really remember the fractionation. The  
9 preparation of the cigarette smoke condensate was  
10 handled by Dr. Kosak -- K-o-s-a-k -- and Dr. Norton  
11 Nelson, and I received the condensate and fractions of  
12 it to test on the animals. The real purpose was that  
13 if -- since we had found in the work with the petroleum  
14 that the active carcinogenic material was in a very  
15 small fraction of the oil, we felt that if we could  
16 work with the smoke condensate and find by testing  
17 different fractions of it on the mice -- if we could  
18 find one or more fraction that would induce tumors,  
19 that that would be a way of finding some method of  
20 removing that or seeing that it didn't form in the  
21 smoke condensate.

22 BY MR. KLAMANN:

23 Q You mentioned that Dr. Rhoads had asked you to meet  
24 with some of the representatives of cigarette -- the  
25 cigarette companies earlier. Do you recall that?

Page 24

1 A Yes.

2 Q Did you ever have occasion specifically to meet with  
3 anyone from the makers of Kent cigarettes?

4 MR. MCELANEY: Objection. Lack of foundation.

5 BY MR. KLAMANN:

6 Q Go ahead, sir.

7 A Well, I was introduced one day to a man by Dr. Nelson.  
8 He apparently had come to see Dr. Nelson, who was the  
9 research director, and Dr. Nelson brought him to meet  
10 me and introduced him to me as either a vice president  
11 or maybe a president -- the president of the company  
12 making Kent cigarettes.

13 MR. MCELANEY: Motion to strike. Hearsay, among  
14 other grounds.

15 BY MR. KLAMANN:

16 Q And Doctor, what followed that introduction?

17 A Well, Dr. Nelson asked me to show this gentleman the  
18 animal facilities that we had where we were doing tests  
19 of different cuts of oil on mouse skin, and also to  
20 tell him about the information that I had brought back  
21 from England about asbestos.

22 Q And what did you do?

23 A That's what I did.

24 Q Did you take the Kent man on a tour of the labs?

25 A Yes.

1 MR. MCELANEY: Objection. Move to strike.  
2 BY MR. KLAMANN:  
3 Q And in the course of the tour of the NYU labs, did you  
4 have conversations with the Kent man?  
5 MR. MCELANEY: Objection.  
6 A Yes.  
7 BY MR. KLAMANN:  
8 Q Would you tell us, please, what you discussed?  
9 MR. MCELANEY: Objection.  
10 A We discussed the animal work. And I am sure that I  
11 told him that the original oil that we had worked with  
12 was very carcinogenic and induced many tumors in the  
13 mice; and that by testing different fractions of it, we  
14 were able to find that the active carcinogenic material  
15 was in a very small percentage of it and that --. Then  
16 the asbestos information that I had at that time was  
17 the -- essentially the information that was published  
18 in the proceedings of the Cancer Prevention Committee,  
19 and I related that to him.  
20 BY MR. KLAMANN:  
21 Q Following those discussions did you make any  
22 recommendation or say anything else to this man?  
23 MR. OHLEMEYER: Objection. Lack of foundation.  
24 MR. MCELANEY: And hearsay.  
25 A Well, after I had presented the information that I

1 brought back from England, after I presented it at that  
2 meeting of the Cancer Prevention Committee, there were  
3 at least three different discussions, different men  
4 that discussed it and raised objections to it and  
5 criticisms of it, which made it a controversial issue  
6 at that time. And their discussions are published in  
7 the -- in the publication of that particular meeting.  
8 And in talking with the Kent man, I am sure that I  
9 must have described what I had been told in England;  
10 and that I also must have mentioned that it was an  
11 impressive set of evidence in my mind, but that it was  
12 a controversial issue, because I particularly had been  
13 advised by Dr. Lanza, who was very knowledgeable about  
14 those matters, that there was no evidence for asbestos  
15 carcinogenicity in the United States.  
16 And I did say that although it was -- I remember  
17 saying to the man from Kent cigarettes that although  
18 the question of carcinogenicity of asbestos was at that  
19 time controversial, it seemed to me that it would be  
20 prudent to use some material other than asbestos as a  
21 filter for cigarettes.  
22 Q And why was that --  
23 MR. MCELANEY: Motion -- excuse me -- motion to  
24 strike everything after the phrase, in talking with the  
25 Kent man.

1 BY MR. KLAMANN:  
2 Q And why was that, Doctor, that you felt it would be  
3 prudent to use some material other than asbestos in the  
4 Kent cigarettes?  
5 MR. MCELANEY: Objection, relevance. You have not  
6 tendered this gentleman as an expert witness.  
7 MR. KLAMANN: I'm asking for a state of mind at  
8 the time he made the comment --  
9 MR. MCELANEY: That's not relevant.  
10 MR. KLAMANN: -- to the Kent man.  
11 MR. MCELANEY: Not relevant.  
12 MR. KLAMANN: And why he made the comment to the  
13 Kent man.  
14 Q Why was it that you felt it would be prudent to use  
15 some other material besides asbestos in these filters  
16 for the cigarettes?  
17 MR. MCELANEY: Objection.  
18 A Well, I felt there was a substantial body of evidence  
19 from the data of Dr. Merewether and Dr. Gloyne that  
20 there was -- that asbestos was carcinogenic. And  
21 therefore it seemed to me to be prudent to use some  
22 other material.  
23 BY MR. KLAMANN:  
24 Q Doctor, in 1952 or '51, in that era, did you have any  
25 understanding of something called the one-hit model?

1 A Yes.  
2 Q What was your understanding?  
3 MR. OHLEMEYER: Objection again. Lack of  
4 foundation, and it calls for opinion testimony not  
5 previously disclosed.  
6 BY MR. KLAMANN:  
7 Q Go ahead, sir.  
8 A Well, the idea of that was that a cancer has to arise  
9 from an abnormal multiplication of a cell; therefore,  
10 if you have one molecule or one fiber that hits that  
11 cell and makes some change in that cell, that leads it  
12 to grow and divide and grow and divide, that you have  
13 the beginning of a cancer. That, I think, is the  
14 one-hit theory.  
15 BY MR. KLAMANN:  
16 Q And did that have anything to do in your mind at the  
17 time you were talking to the Kent man with the prudence  
18 of using some other material besides asbestos in the  
19 filters of those cigarettes?  
20 MR. OHLEMEYER: Objection.  
21 MR. MCELANEY: Objection. Leading, hearsay, and  
22 relevance.  
23 BY MR. KLAMANN:  
24 Q You can answer, Doctor.  
25 A I would say yes.

1 Q Did you ever follow up on the advice that you -- or  
 2 recommendation that you had made to the Kent man?  
 3 MR. MCELANEY: Objection.  
 4 A No.  
 5 BY MR. KLAMANN:  
 6 Q Did you have discussions later on with other  
 7 researchers involved in the project with the cigarette  
 8 manufacturers about the use of asbestos in the Kent  
 9 filter --  
 10 MR. MCELANEY: Objection to the form.  
 11 BY MR. KLAMANN:  
 12 Q -- following your discussion with the Kent man?  
 13 You can answer.  
 14 A As I recall, the only one I talked with about the visit  
 15 from the man that I was told from -- that was from a  
 16 company that made Kent cigarettes was that I mentioned  
 17 it to Cuyler Hammond. I mentioned his visit and our  
 18 discussion to the chairman of the Cancer Prevention  
 19 Committee, who was a Dr. Cuyler Hammond, who was very  
 20 active in doing studies on cigarette smoke, or doing  
 21 studies on lung cancer in relation to the smoking  
 22 habits of people.  
 23 Q And Doctor, what was the nature of that conversation?  
 24 MR. MCELANEY: Objection.  
 25 MR. OHLEMEYER: Objection. Calls for --

1 BY MR. KLAMANN:  
 2 Q Go ahead.  
 3 A Well, I merely mentioned --  
 4 MR. OHLEMEYER: I'm sorry, Doctor. I don't mean  
 5 to interrupt. The question clearly calls for hearsay.  
 6 It lacks appropriate foundation.  
 7 MR. KLAMANN: It's not offered for the truth of  
 8 the matter asserted.  
 9 Q But go ahead, Doctor. You may answer.  
 10 MR. OHLEMEYER: Then what is it offered for?  
 11 BY MR. KLAMANN:  
 12 Q You may answer, Doctor.  
 13 MR. OHLEMEYER: Whose state of mind is it offered  
 14 for, Mr. Klamann?  
 15 BY MR. KLAMANN:  
 16 Q Go ahead, Doctor. You can answer the question.  
 17 A Well, I merely mentioned his visit to Dr. Hammond.  
 18 Q Whose visit?  
 19 A The visit of the man that I was told was from the  
 20 company that made Kent cigarettes.  
 21 Q Fine. And what happened when you mentioned that to  
 22 Dr. Hammond?  
 23 MR. OHLEMEYER: Objection.  
 24 BY MR. KLAMANN:  
 25 Q Go ahead, sir.

1 A I think it must have been some time later -- how long I  
 2 don't remember -- that Dr. Hammond mentioned to me that  
 3 some material other than asbestos would be used or was  
 4 being used in the filters for Kent cigarettes.  
 5 MR. MCELANEY: Motion to strike.  
 6 BY MR. KLAMANN:  
 7 Q Doctor, you mentioned that you had discussed with the  
 8 Kent man some of the materials that you had obtained  
 9 and the information that you had obtained from your  
 10 visit to England, and specifically that which  
 11 ultimately appeared in the proceedings of the Cancer  
 12 Prevention Committee. Do you recall that?  
 13 MR. MCELANEY: Objection.  
 14 BY MR. KLAMANN:  
 15 Q Go ahead, sir.  
 16 A I missed the question.  
 17 Q Doctor, you mentioned that you had discussed with the  
 18 Kent man the information that you had gathered from  
 19 your trip to England. Do you recall that?  
 20 A Yes.  
 21 MR. MCELANEY: Objection.  
 22 BY MR. KLAMANN:  
 23 Q And you mentioned that that information eventually  
 24 appeared in the published proceedings of the Cancer  
 25 Prevention Committee; that is to say, the information

1 you --  
 2 A That's right.  
 3 Q -- obtained from England?  
 4 A Yes.  
 5 MR. MCELANEY: Objection to the form.  
 6 BY MR. KLAMANN:  
 7 Q And I'm looking at the proceedings of the Cancer  
 8 Prevention Committee published by the American Medical  
 9 Association in 1952, and there is in those proceedings  
 10 a section called Abstract of Discussion. In these  
 11 meetings that the Cancer Prevention Committee had, and  
 12 specifically the one that led to the publication of  
 13 this proceedings documents, were there discussions  
 14 following the presentations by the various researchers?  
 15 A Yes.  
 16 Q And was there a discussion, if you recall, following  
 17 your presentation of the information you gathered from  
 18 England?  
 19 A Yes.  
 20 Q And who were the participants in that discussion, if  
 21 you recall?  
 22 A Yes. I recall Dr. Cartier from the clinic that saw  
 23 asbestos miners in Canada, Mr. Lew from Metropolitan  
 24 Life Insurance Company, and Dr. Lanza who the director  
 25 of the Institute for Industrial Medicine at New York

1 University.  
 2 Q In the published proceedings of the Cancer Prevention  
 3 Committee meeting it shows a conversation that  
 4 apparently occurred in this discussion between yourself  
 5 and Dr. Cartier. Do you recall elements of that  
 6 discussion?  
 7 A Well, I recall that there was in the printed account of  
 8 the discussion questions. Both Dr. Cartier and Dr. --  
 9 and Mr. Lew and Dr. Lanza brought up different kinds of  
 10 questions questioning the validity of the English  
 11 conclusion.  
 12 Q Was Dr. Cartier --  
 13 MR. MCELANEY: Excuse me.  
 14 BY MR. KLAMANN:  
 15 Q -- affiliated, to your knowledge, with any --  
 16 MR. MCELANEY: Excuse me.  
 17 Q -- maker of asbestos-containing product?  
 18 MR. MCELANEY: A motion to strike the previous  
 19 response as non-responsive and producing a hearsay  
 20 response. Pardon me for interrupting.  
 21 BY MR. KLAMANN:  
 22 Q Go ahead, Doctor. Was Dr. Cartier, to your knowledge,  
 23 affiliated with any maker or producer of asbestos or  
 24 asbestos products?  
 25 A I -- well, I think that he was seeing principally the

1 men that worked in a mine that was called the  
 2 Johns-Manville mine.  
 3 Q And in the printed proceedings material that was  
 4 published in 1952, there is a table. Do you recall  
 5 that?  
 6 MR. MCELANEY: Objection. Hearsay.  
 7 A What table?  
 8 BY MR. KLAMANN:  
 9 Q Table No. 3, cases of carcinoma of the lungs detected  
 10 among 4,000 workers, 1940 to 1950. This is a table  
 11 from Dr. Cartier that appears in the discussion.  
 12 A Oh, Dr. Cartier -- oh, I see. In his discussion,  
 13 right.  
 14 MR. MCELANEY: Objection, hearsay.  
 15 BY MR. KLAMANN:  
 16 Q And Doctor, in that table there are -- looks to be  
 17 eight cases of cancer that are reported, two of which  
 18 are listed as pleural mesothelioma. Do you recall  
 19 that?  
 20 MR. MCELANEY: Objection.  
 21 A I believe I do.  
 22 BY MR. KLAMANN:  
 23 Q And did Dr. Cartier present evidence of mesothelioma  
 24 from the asbestos-exposed people that he had seen at  
 25 this proceeding in -- that were published in 1952?

1 MR. MCELANEY: Objection.  
 2 BY MR. KLAMANN:  
 3 Q In other words, did he -- did he show or report on  
 4 these two cases of mesothelioma along with the lung  
 5 cancers?  
 6 MR. MCELANEY: Objection.  
 7 MR. RUBIN: Objection.  
 8 A Whatever is published there is what -- what he must  
 9 have reported.  
 10 BY MR. KLAMANN:  
 11 Q Yes, sir. And what's published here in this table  
 12 includes a column that says Degree of Asbestosis, and  
 13 next to that is the type of tumor. And in the column  
 14 Degree of Asbestosis, he shows none next to two  
 15 bronchogenic carcinomas, minimal next to one pleural  
 16 mesothelioma, and none next to the other pleural  
 17 mesothelioma.  
 18 Did you discuss that with Dr. Cartier --  
 19 MR. MCELANEY: Objection.  
 20 MR. RUBIN: Objection.  
 21 MR. OHLEMEYER: Objection.  
 22 BY MR. KLAMANN:  
 23 Q -- at the time -- excuse me.  
 24 Did you discuss that with Dr. Cartier at the time  
 25 of the -- this committee meeting where you had the

1 discussions we've been talking about?  
 2 MR. RUBIN: Objection.  
 3 A Well, I looked at this article fairly recently, so I  
 4 remember some things about it that were actually  
 5 written in it. And I remember that the discussion that  
 6 I had with Dr. Cartier was principally in response to  
 7 his question that if asbestos was carcinogenic, would  
 8 one not expect to find all the tumors in the men that  
 9 he saw to be the same. And I said I didn't think so,  
 10 because with carcinogens tested on animals, you can get  
 11 a variety of different kinds of tumors not all  
 12 histologically the same. Those -- that was the  
 13 discussion that I remember --  
 14 BY MR. KLAMANN:  
 15 Q All right. Doctor, reading --  
 16 A -- with Dr. Cartier.  
 17 Q I'm sorry?  
 18 A With Dr. Cartier.  
 19 Q Thank you. In reading from the Abstract of Discussion  
 20 contained within the published proceedings of the  
 21 Cancer Prevention Committee in 1952, there is a section  
 22 on Page 79 that shows Dr. Smith, colon. Would that be  
 23 an indication of a report of what you had said in the  
 24 discussion?  
 25 MR. WISNIEWSKI: Objection.



1 BY MR. KLAMANN:  
2 Q Is that how the article worked?  
3 A Yes.  
4 Q And let me read to you just a short section from that:  
5 I am interested in your observation of two cases of  
6 pleural mesothelioma. This is a rather rare tumor. In  
7 examining pathological material sent us from England by  
8 Dr. Hinson, we found among six cancerous asbestotic  
9 lungs two presenting alveolar cell carcinoma. These  
10 tumors are often diagnosed as pleural mesothelioma. I  
11 should very much like to exchange slides with you.  
12 Was that accurately reported, that conversation  
13 that you had with Dr. Cartier in this publication?  
14 MR. WISNIEWSKI: Objection.  
15 MR. RUBIN: Objection. Lack of foundation. He's  
16 exhausted his memory already, he said.  
17 BY MR. KLAMANN:  
18 Q Go ahead, Doctor.  
19 A I would think so.  
20 Q All right. Now, all of that occurred before your  
21 meeting with the Kent man, as I understand it --  
22 MR. McELANEY: Objection to the form of question.  
23 BY MR. KLAMANN:  
24 Q -- that is to say these conversations with Dr. Cartier  
25 at this meeting and the receipt of the pathology from

1 Hinson?  
2 A Yes.  
3 MR. RUBIN: Objection.  
4 MR. OHLEMEYER: Objection.  
5 MR. McELANEY: Objection to the form of the  
6 question.  
7 BY MR. KLAMANN:  
8 Q And it was the contents of the meeting and discussion  
9 afterwards that you discussed with the Kent man, as I  
10 understand it. Am I right about that?  
11 MR. OHLEMEYER: Objection.  
12 MR. McELANEY: Objection. Asked and answered.  
13 Leading and hearsay and lack of foundation.  
14 BY MR. KLAMANN:  
15 Q Go ahead.  
16 A Well, I can't see how it would be possible for me to  
17 have received those lungs from Dr. Hinson and studied  
18 them by that time that they were reported in this  
19 discussion. But if it's in the discussion, I'm sure  
20 that it happened.  
21 Q Yes, sir.  
22 A So I would -- I would have had that material at the  
23 time that I met the man that was introduced to me as a  
24 man from Kent.  
25 Q Now --

1 MR. RUBIN: I move to strike that part of the  
2 answer relating to Dr. Hinson, since he says he doesn't  
3 believe he had the material from Dr. Hinson before the  
4 report of the meeting. I would like to strike that  
5 part of it.  
6 MR. OHLEMEYER: I would also ask, Mr. Klamann,  
7 that you read the witness the last sentence of that  
8 paragraph; in an effort to refresh his recollection,  
9 include an accurate record about the timing of all  
10 this.  
11 BY MR. KLAMANN:  
12 Q It said I should very much like to exchange slides with  
13 you. And --  
14 MR. OHLEMEYER: Well, excuse me. My objection is  
15 you ought to then ask the doctor if that refreshes his  
16 recollection as to the timing of all this, because it  
17 clearly suggests he hadn't received the slides at the  
18 time he wrote this.  
19 MR. KLAMANN: Mr. Ohlemeyer, in all due respect,  
20 it clearly suggests that he had not received the slides  
21 from Dr. Cartier. He's talking to Dr. Cartier. He  
22 says he had received the materials sent us from England  
23 by Hinson, by Dr. Hinson.  
24 We found among six cancerous asbestotic lungs two  
25 presenting alveolar cell carcinoma. These tumors are

1 often diagnosed as pleural mesothelioma. I should very  
2 much like to exchange slides with you. That is to  
3 say --  
4 Q Doctor, the slides that you wanted to exchange with  
5 Dr. Cartier would have been the ones you had from  
6 Hinson, so that he could look at those, for the ones he  
7 had of the mesotheliomas that he had discovered; am I  
8 right?  
9 A Yes.  
10 MR. RUBIN: Objection, leading.  
11 BY MR. KLAMANN:  
12 Q What slides, Doctor, did you want to exchange with  
13 Dr. Cartier as referenced in this discussion with him  
14 at the 1950 meeting published in 1952?  
15 MR. RUBIN: Objection. He's already indicated he  
16 doesn't remember whether he had the slides. It was a  
17 lack of foundation.  
18 MR. KLAMANN: Well, that's incorrect. You are  
19 misconstruing the doctor's testimony and  
20 misrepresenting the facts.  
21 MR. RUBIN: Wait a second.  
22 MR. KLAMANN: Be that as it may --  
23 MR. RUBIN: You know, you're not entitled to make  
24 speeches on the record. I made an objection --  
25 MR. KLAMANN: No, you're not entitled to make --

1 MR. RUBIN: Excuse me, sir. May I finish?  
2 MR. KLAMANN: -- a speaking objection and  
3 characterize the record. That's the problem.  
4 MR. RUBIN: I have to tell you if it's as to form  
5 what the objection is, and you are -- there's a lack of  
6 foundation in this record for this doctor at this point  
7 in time in 1997 to testify what he was referring to,  
8 because he's already exhausted his memory. The record  
9 will speak for itself.  
10 BY MR. KLAMANN:  
11 Q Doctor, in the conversation that you had with  
12 Dr. Cartier where you indicated that you were  
13 interested in his observation of two cases of pleural  
14 mesothelioma and that you had received pathological  
15 material sent from England by Dr. Hinson which were --  
16 involved six cancerous asbestotic lungs, two presenting  
17 alveolar cell carcinoma; and where you said these  
18 tumors are often diagnosed as pleural mesothelioma; I  
19 should very much like to exchange slides with you, what  
20 did you mean?  
21 MR. MCELANEY: Objection to the question.  
22 MR. RUBIN: Objection.  
23 A Well, I must have meant that I would be very glad if  
24 Dr. Cartier would send me slides from his patients  
25 diagnosed as pleural mesothelioma and that I would send

1 BY MR. KLAMANN:  
2 Q Let me ask it again and see if I can change it to be a  
3 clearer question. There is a table in this Abstract of  
4 Discussion showing what you and Dr. Cartier talk about,  
5 including the two mesotheliomas. And that table lists  
6 two mesotheliomas among eight cases of carcinoma of the  
7 lungs.  
8 When you ask Dr. Cartier to exchange slides with  
9 you with respect to the pleural mesotheliomas, were you  
10 referring to the pleural mesotheliomas that he had  
11 presented in that table at the time of the meeting or  
12 to some other mesotheliomas?  
13 A No, I was referring to those.  
14 MR. MCELANEY: Objection. Motion to strike.  
15 BY MR. KLAMANN:  
16 Q Now, Mr. Ohlemeyer asked you earlier in a deposition  
17 that was taken this morning by Mr. Ohlemeyer and some  
18 of the other attorneys for the defense whether it was  
19 prudent in your view for a company to come to people  
20 who were knowledgeable about asbestos, and you gave him  
21 your answer that it was.  
22 Doctor, you were at least for a period of time  
23 researching asbestos --  
24 MR. OHLEMEYER: I object to the --  
25

1 him slides from the cases that Dr. Hinson had sent  
2 over.  
3 Now, I said a minute ago that I couldn't see how I  
4 could have had slides that we had cut from Hinson's  
5 cases by the time that I presented that discussion, but  
6 I must have or I wouldn't have been able to say that I  
7 would -- that I had the diagnoses on them.  
8 BY MR. KLAMANN:  
9 Q And the slides that you received from Dr. Hinson that  
10 you mention in this comment, are those from among the  
11 six specimens that he sent you that you talked about  
12 earlier?  
13 MR. RUBIN: Objection.  
14 A Yes.  
15 BY MR. KLAMANN:  
16 Q And then the mesothelioma that you're talking about in  
17 the discussion with Dr. Cartier as published by the  
18 American Medical Association of 1952 would have been  
19 those two mesotheliomas among the eight cases of cancer  
20 reported in the table from Dr. Cartier, or were they  
21 different mesotheliomas?  
22 MCELANEY: Objection.  
23 MR. RUBIN: I object. I don't understand the  
24 question.  
25 A Well, I don't understand that question.

1 BY MR. KLAMANN:  
2 Q -- at NYU, were you not?  
3 MR. OHLEMEYER: I object to the statement in front  
4 of the question and move to strike it. I have no  
5 objection to the actual question.  
6 BY MR. KLAMANN:  
7 Q Go ahead.  
8 A Yes.  
9 Q And what became of your efforts to continue that  
10 research concerning asbestos?  
11 MR. RUBIN: Objection. Relevancy, hearsay.  
12 MR. MCELANEY: I also must confess I do not  
13 understand the question.  
14 BY MR. KLAMANN:  
15 Q Go ahead, Doctor. You can answer it.  
16 Was there a proposal submitted for research on the  
17 health effects of asbestos at your Institute for  
18 Occupational Medicine?  
19 MR. OHLEMEYER: I object to the form of the  
20 question.  
21 BY MR. KLAMANN:  
22 Q Go ahead.  
23 A A proposal had been submitted, oh, back when I first  
24 arrived at New York University for testing asbestos  
25 fibers against fetal -- the growth of fetal lung

1 tissue.  
 2 Q Was your lab competent to perform studies of the health  
 3 effects of asbestos?  
 4 MR. WISNIEWSKI: Objection. Relevancy.  
 5 MR. McELANEY: Objection. Also asks for an expert  
 6 opinion of a lay witness.  
 7 BY MR. KLAMANN:  
 8 Q Did you feel, Doctor, at the time when you were  
 9 involved with the lab that -- that your lab was  
 10 competent to do studies of the health effects of  
 11 asbestos?  
 12 A Yes.  
 13 MR. OHLEMEYER: Objection.  
 14 MR. WISNIEWSKI: Same objection.  
 15 MR. McELANEY: Objection.  
 16 BY MR. KLAMANN:  
 17 Q And had you been asked by the Kent man to make such a  
 18 study of the health effects of asbestos found in the  
 19 filter of Kent cigarettes, would you have been willing  
 20 to do that?  
 21 MR. McELANEY: Objection.  
 22 A I would say yes.  
 23 BY MR. KLAMANN:  
 24 Q All right. Were you ever asked do that kind of study,  
 25 Doctor?

1 MR. McELANEY: Objection.  
 2 A No.  
 3 MR. KLAMANN: That's all the questions I have.  
 4 Thank you very much, Doctor.  
 5 EXAMINATION  
 6 BY MR. OHLEMEYER:  
 7 Q I've just got a couple, Doctor. I'm not going to  
 8 re-ask all the questions or repeat the examination from  
 9 this morning, but I assume if I asked you all those  
 10 same questions, you'd give me the same answers?  
 11 A I would hope so.  
 12 Q As I understand the work your laboratory was doing in  
 13 the '50s, it was not inhalation work; it was skin  
 14 painting work; is that right?  
 15 A That's right.  
 16 Q And the work that you did, I think as you described it,  
 17 touched upon asbestos, but you weren't really involved  
 18 in original research regarding asbestos and its  
 19 relationship to health until you moved to Fairleigh  
 20 Dickinson in 1960?  
 21 A That's right.  
 22 Q What you had done in the early '50s was go talk to some  
 23 other people who had conducted research on asbestos?  
 24 A Yes.  
 25 Q And you reported the results of that research in

1 scientific papers so other researchers could read it  
 2 and review it?  
 3 A Right.  
 4 Q And that's because at that period of time there were a  
 5 lot of people like yourself interested in the study of  
 6 cancer and writing about research, and sharing  
 7 information was the way that you all helped promote  
 8 research and investigation into the possible causes of  
 9 cancer?  
 10 A Yes.  
 11 Q And your trip to England was not limited to a survey or  
 12 an investigation of the occupational exposure to  
 13 asbestos, was it?  
 14 A No.  
 15 Q It dealt with shale oil, petroleum, and what you call  
 16 dyestuffs?  
 17 A Right.  
 18 Q Which are other chemicals, right?  
 19 A Right.  
 20 Q And those chemicals -- the dyestuffs were suspected of  
 21 creating a risk to the health of workers using them?  
 22 A Yes.  
 23 Q It's fair to say, Doctor, that a lot of time has passed  
 24 since you took that trip to England?  
 25 A Yes.

1 Q And at the time you prepared your report about your  
 2 trip, you took care to include in it everything you had  
 3 learned over there about asbestos?  
 4 A Yes, I tried to.  
 5 Q You wouldn't have -- you wouldn't have left things out  
 6 of that report if you thought they -- they were  
 7 important or of interest to other researchers involved  
 8 in the study of cancer?  
 9 A No.  
 10 Q And the conclusion -- well, that report contains the  
 11 facts that you gathered on that trip and any  
 12 conclusions you might have drawn from those facts?  
 13 A Yes, sir.  
 14 Q And you presented that information to other scientists  
 15 at meetings, and there were discussion about that  
 16 report?  
 17 A Yes.  
 18 Q And the discussions at those meetings is recorded in  
 19 some of the papers we've talk about today?  
 20 A Yes.  
 21 Q And the purpose of having those discussions, again, is  
 22 to let people ask questions and exchange information  
 23 about possible causes of cancer?  
 24 A True.  
 25 Q And you had some meetings with some pretty impressive

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<p>1 researchers in the area of cancer at that time, didn't</p> <p>2 you?"</p> <p>3 A Yes.</p> <p>4 Q Would you describe Dr. Wynder as one of the leading</p> <p>5 researchers in the area of cancer in the 1950s?</p> <p>6 A Yes.</p> <p>7 Q Specifically lung cancer?</p> <p>8 A Yes.</p> <p>9 Q Have you ever heard of a man named Dr. Ochsner,</p> <p>10 Alton Ochsner?</p> <p>11 A Yes.</p> <p>12 Q Would you also describe him as one of the leading</p> <p>13 researchers in the area of lung cancer during the</p> <p>14 1950s?</p> <p>15 A Dr. Ochsner was a surgeon. And research, I can't</p> <p>16 recall.</p> <p>17 Q How about the diagnosis of lung cancer?</p> <p>18 A Oh, yes.</p> <p>19 Q Certainly interested in that?</p> <p>20 A Yes.</p> <p>21 Q Were there medical journals that were published during</p> <p>22 the '50s that allowed individuals like yourself to</p> <p>23 exchange information about possible causes of cancer or</p> <p>24 other risks to health?</p> <p>25 A Yes.</p>	<p>1 evidence and some findings of other researchers that</p> <p>2 impressed you about that relationship, but that there</p> <p>3 were some other researchers who were less impressed</p> <p>4 with the evidence associating exposure to asbestos in</p> <p>5 an occupational setting with the subsequent development</p> <p>6 of cancer?</p> <p>7 A Right.</p> <p>8 Q And is that the nature of science: Information is</p> <p>9 gathered, people look at it, they reach different</p> <p>10 conclusions, and they try to do experiments or research</p> <p>11 to try to answer some of the questions people have</p> <p>12 about the evidence?</p> <p>13 A Yes, sir.</p> <p>14 Q And was it your practice as a founder of the Cancer</p> <p>15 Prevention Committee to identify and report any</p> <p>16 potential causes of cancer or uses of products or</p> <p>17 substances or exposures to substances that you thought</p> <p>18 might be potential causes of cancer?</p> <p>19 Let me rephrase the question, Doctor.</p> <p>20 A All right.</p> <p>21 Q Was one of the purposes of the Cancer Prevention</p> <p>22 Committee to make information available to researchers</p> <p>23 about potential causes of cancer?</p> <p>24 A Yes.</p> <p>25 Q And that included substances or chemicals or other</p>
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<p>1 Q Was one of those journals the Journal of the American</p> <p>2 Medical Association?</p> <p>3 A Right.</p> <p>4 Q Another one was the New England Journal of Medicine; is</p> <p>5 that right?</p> <p>6 A Yes.</p> <p>7 Q Well-respected journals; is that right?</p> <p>8 A Yes, sir.</p> <p>9 Q Widely read by individuals involved in research</p> <p>10 relating to health?</p> <p>11 A Right.</p> <p>12 Q You would have expected researchers like Dr. Wynder and</p> <p>13 Dr. Ochsner and journals like the American Medical</p> <p>14 Association's journal or the New England Journal of</p> <p>15 Medicine to point out or bring to the attention of</p> <p>16 researchers like yourself potential causes of cancer or</p> <p>17 risks to health?</p> <p>18 A Yes.</p> <p>19 Q That's one of their functions?</p> <p>20 A Right.</p> <p>21 Q The health effects of exposure to asbestos that you had</p> <p>22 studied in the 1950s occurred in an occupational</p> <p>23 setting; is that right?</p> <p>24 A Right.</p> <p>25 Q And I think you told us earlier that there was some</p>	<p>1 things that might -- that individuals might come in</p> <p>2 contact with either at work or in the environment that</p> <p>3 might lead to the development of cancer?</p> <p>4 A Right.</p> <p>5 Q And your practice -- is it fair to say that the</p> <p>6 objective of that organization in your practice was to</p> <p>7 disclose information about possible risks to health and</p> <p>8 encourage research in those areas?</p> <p>9 A Yes, sir.</p> <p>10 Q And that involved, I think as we've said before,</p> <p>11 exchanging and sharing information with other</p> <p>12 individuals about potential causes of cancer?</p> <p>13 A Yes.</p> <p>14 Q Now, at the time back in the '50s, despite the research</p> <p>15 relating to the risk to health of exposure to asbestos</p> <p>16 in an occupational setting, asbestos was being used in</p> <p>17 a variety of other products?</p> <p>18 A Yes.</p> <p>19 Q And it was considered useful as a component part of</p> <p>20 other products at that time?</p> <p>21 A Yes.</p> <p>22 MR. KLAMANN: I object to the form. Again, calls</p> <p>23 for expert opinion.</p> <p>24 BY MR. OHLEMEYER:</p> <p>25 Q And were you aware of the fact that during the 1950s</p>

1 asbestos was used in certain insulation and building  
2 materials?  
3 A Yes, sir.  
4 Q Were you aware of the fact that during the 1950s it was  
5 used in heart and lung operations to stimulate  
6 circulation?  
7 A I can't remember that, anything about that.  
8 Q Now, during the 1950s when you wrote about occupational  
9 exposure to asbestos and when you talked about it at  
10 these meetings, you never wrote or you never said, did  
11 you, that using asbestos in building materials or other  
12 products created a risk to the health of installers or  
13 consumers?  
14 A I don't think I ever said that.  
15 Q And the evidence that suggests there might be a risk to  
16 health resulting from exposure to asbestos in building  
17 materials or other products didn't come along until the  
18 1970s, did it?  
19 MR. KLAMANN: I object to the form. That calls  
20 for an expert opinion.  
21 A Well, I said that I didn't say that there was a hazard  
22 to people in buildings that were insulated with  
23 asbestos or in people working installing asbestos.  
24 That was something that -- the epidemiology studies  
25 were done by Dr. Selikoff and Dr. Hammond. I did just

1 experimental studies with animals.  
2 BY MR. OHLEMEYER:  
3 Q And those epidemiology studies didn't get conducted and  
4 published until the late '60s and '70s; is that right?  
5 MR. KLAMANN: I object to the form. It calls for  
6 an expert opinion, expert testimony.  
7 A Well, I remember the -- I think it was the major -- the  
8 first major epidemiological study that Selikoff and  
9 Hammond brought out was, I think, in 1965.  
10 BY MR. OHLEMEYER:  
11 Q Now, during the 1950s, Doctor, you were studying  
12 asbestos -- well, you were studying cancer, you were  
13 writing about cancer, and you had gathered some  
14 information about exposure to asbestos in the  
15 workplace, right?  
16 A Yes.  
17 Q And you never wrote or said publically in any of these  
18 meetings that asbestos filter material should not be  
19 used in a cigarette filter, did you?  
20 A No.  
21 Q And you never suggested that using -- you never wrote  
22 or you never suggested that using asbestos in a  
23 cigarette filter created a risk to health of people  
24 using that filter?  
25 A No.

1 Q And at that time during the 1950s, the only risk to  
2 health associated with exposure to asbestos involved  
3 people who were working with raw asbestos, who were  
4 exposed to enough of that asbestos over a long enough  
5 period of time to produce a disease called asbestosis.  
6 MR. KLAMANN: I object to the form. It calls for  
7 an expert opinion.  
8 A Yes.  
9 BY MR. OHLEMEYER:  
10 Q That was -- that was the evidence that you had  
11 collected when you did your -- made your trip to  
12 England and did your research on the subject?  
13 A Yes.  
14 Q And that was the evidence that you reported to other  
15 scientists studying the issue?  
16 A Yes.  
17 Q And you have --  
18 Let me ask you this, Doctor. We've talked a lot  
19 today about things that happened almost 50 years ago.  
20 Is that fair to say?  
21 A 50?  
22 Q 45.  
23 A Well, 40.  
24 Q Between 40 and 50 years ago. And a lot of what we've  
25 discussed with respect to your trip to England and the

1 1950s occurred before you became directly involved in  
2 research involving asbestos?  
3 A Yes, sir.  
4 Q And you have researched that subject and learned a lot  
5 about asbestos since then; isn't that fair to say?  
6 A Yes.  
7 Q You started studying it in some detail in the 1960s?  
8 A Yes.  
9 Q And is it fair to say, Doctor, that the best  
10 description of your knowledge and awareness and beliefs  
11 about the relationship between asbestos and disease are  
12 contained in the writings and the reports that you  
13 prepared on that subject during the 1950s?  
14 A During the '60s?  
15 Q The '50s.  
16 Let me rephrase the question. The best  
17 description of what you knew or what you believed or  
18 even what you suspected about asbestos during the 1950s  
19 is contained in your writings and your statements on  
20 that subject from the 1950s?  
21 A Yes.  
22 Q You haven't had any occasion to discuss Kent cigarettes  
23 with anyone between the 1950s and the time that  
24 Mr. Crick called you to talk to you about it?  
25 A That's correct.

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1 Q And he spent some time with you and looked at some of  
2 your papers and showed you a couple of papers you've  
3 told us about today already, right?  
4 A Yes.  
5 Q And you spent about 14 hours talking with him about the  
6 subject before today?  
7 A That's right.  
8 Q And those discussions refreshed your recollection in  
9 some ways about what you had done in the '50s on this  
10 subject?  
11 A Yes.  
12 Q And that was the purpose of all -- of the meetings, was  
13 to review and refresh your recollection on the subject?  
14 MR. KLAMANN: I object to the form. It calls for  
15 speculation and conjecture as to what the purpose may  
16 have been in the mind of others.  
17 A That was -- the purpose of the meetings was to review  
18 the information that I had. And, of course, that did  
19 bring back a great deal of memories of 40 years ago.  
20 BY MR. OHLEMEYER:  
21 Q And did you have dinner with Mr. Crick last night?  
22 A I did.  
23 Q Did he come drive you over from your home?  
24 A No.  
25 Q Okay. So you had lunch with him today between the

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1 deposition this morning and then this afternoon's  
2 examination?  
3 A I had lunch across the hall in my room by myself. What  
4 happened to Mr. Crick, I don't know.  
5 Q Is it fair to say, Doctor, that the first time you  
6 made -- with the exception of the discussion you had  
7 with Dr. Hammond, the first time you discussed or made  
8 public any conversations you might have had with the  
9 people who made Kent cigarettes back in the '50s  
10 occurred after Mr. Crick contacted you to talk to you  
11 about your work and to discuss these matters with you  
12 over the course of those 14 hours?  
13 A Well, I'm sure that I talked about my visit with the  
14 gentleman that I was told was from Kent with  
15 Dr. Nelson, who had introduced me to him; so I would  
16 say that as far as I recall my conversations with  
17 Dr. Nelson and then with Dr. Cuyler Hammond, as I  
18 talked about previously, were the only conversations  
19 that I can recall about Kent cigarettes and asbestos in  
20 the filters until, as you say, Mr. Crick contacted me  
21 about that.  
22 Q Did you know anyone who smoked Kent cigarettes during  
23 the 1950s?  
24 A Did I?  
25 Q Yes.

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1 A I don't remember smoking Kent cigarettes.  
2 Q Do you know anyone else who did?  
3 A I don't -- I don't recall anyone specifically. I know  
4 that they were a popular brand at that time.  
5 Q Do you know if Dr. Wynder smoked Kent cigarettes?  
6 A I don't know.  
7 Q How much time did you spend talking with the person  
8 that Dr. Nelson told you was from Kent, as you've  
9 described it?  
10 A Less than an hour. We visited the laboratory. He  
11 looked at the animals.  
12 Q The cigarette people at that time were involved in  
13 animal research involving cigarette smoke and the mouse  
14 skin painting-type experiments; is that right?  
15 Let me rephrase the question. There was interest  
16 in that time in conducting experiments with cigarette  
17 smoke itself --  
18 A Yes.  
19 Q -- to see whether there was a relationship between  
20 smoking and risk to health?  
21 A Right.  
22 Q If you had been asked to do an experiment in the 1950s  
23 involving exposure to asbestos by inhalation, would you  
24 have had the machinery and the equipment to do that?  
25 A We didn't have it. We could have assembled it.

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1 Q If you were going to do an experiment back then that  
2 involved the smoking of cigarettes for analytical or  
3 experimental purposes, would you have used an automated  
4 smoking machine?  
5 MR. KLAMANN: I object to the form. It calls for  
6 speculation and conjecture.  
7 A Well, I assume that an automated -- when you say an  
8 automated smoking machine it means a mechanical machine  
9 to puff on cigarettes. And that is the device that, as  
10 I understand it, Dr. Kosak and Dr. Nelson constructed.  
11 BY MR. OHLEMEYER:  
12 Q In conducting an experiment that attempted to predict  
13 or reproduce what would happen when a person smoked a  
14 cigarette, would you want to use a machine or a device  
15 that allowed you to reproduce as accurately as possible  
16 and as reliably as possible that smoking behavior?  
17 A Yes.  
18 MR. KLAMANN: Excuse me, Doctor. I didn't have an  
19 opportunity to interject my objection. I do object to  
20 the form as calling for speculation and conjecture and  
21 expert opinion testimony.  
22 BY MR. OHLEMEYER:  
23 Q If you were going to conduct an experiment, Doctor, in  
24 the 1950s that was designed to predict or reproduce  
25 what would happen when people smoked cigarettes, would

1 you want to use freshly made cigarettes that were  
2 substantially similar to those that were manufactured  
3 and sold at that time?  
4 MR. KLAMANN: I object to the form. Again, calls  
5 for speculation and conjecture beyond the expertise of  
6 the witness, calls for an expert opinion, and it's  
7 vague and ambiguous as to what is meant by fresh in  
8 terms of the question, particularly in light of the  
9 lack of foundation with respect to this witness.

10 BY MR. OHLEMEYER:

11 Q You can answer the question, Doctor.

12 A Yes.

13 Q And how many cigarettes would you want to use in an  
14 experiment to assure yourself that you had had a  
15 reliable sample or representative sample of what it was  
16 you were -- you were testing?

17 MR. KLAMANN: I object to the form of the  
18 question. Calls for expert opinion, calls for  
19 speculation and conjecture, lacks foundation.

20 A Well, we would need enough cigarettes to produce a  
21 substantial quantity of condensate, tar, because our  
22 real interest in the problem was to -- when we found  
23 that we were getting only papillomas with the tar  
24 itself, benign tumors, our real interest was in  
25 fractions of the tar itself, because we found that some

1 fractions would induce papillomas and others would  
2 not. And we found that one or two fractions were more  
3 active than the whole tar by itself.

4 BY MR. OHLEMEYER:

5 Q Have you been involved in the design and the execution  
6 of scientific experiments?

7 A In the which?

8 Q The design and execution of scientific experiments.

9 You've been involved --

10 A Yes.

11 Q And is it fair to say, Doctor, that in the design and  
12 execution of such an experiment, you want  
13 representative material that can be evaluated by a  
14 methodology that allows it to be reproduced and  
15 recreated by other scientists?

16 MR. KLAMANN: I object to the form. Calls for an  
17 expert opinion, also is vague and ambiguous as to what  
18 type of scientific experiment we're talking about and  
19 under what circumstances the experiment is to be  
20 conducted and so forth. Insufficient facts have been  
21 provided for this witness to have a -- respond to the  
22 hypothetical with his expert opinion or any opinion.

23 BY MR. OHLEMEYER:

24 Q I can have her read it back; or if you can remember it,  
25 you can answer it.

1 A I think I remember it, and I'll answer it by saying  
2 yes.

3 Q Doctor, can you imagine -- well, can you -- strike  
4 that.

5 Can you draw -- do you think you could draw  
6 scientifically valid or reliable conclusions about the  
7 behavior of one pack of cigarettes in a data set of  
8 13 billion cigarettes that were sold? Would that make  
9 sense?

10 MR. KLAMANN: I object to the form of question.  
11 It's vague and ambiguous.

12 BY MR. OHLEMEYER:

13 Q I'll rephrase the question. Let's say I had one pack  
14 of cigarettes, Doctor, and assume that I want to do an  
15 experiment with that pack that was designed to predict  
16 what would happen to people when they smoked a  
17 cigarette of the same vintage, the same brand, the same  
18 design. If -- if I knew there were 13 billion of those  
19 cigarettes sold, do you think you could draw reliable  
20 or reasonable conclusions about the behavior of those  
21 cigarettes if you did an experiment on just one pack of  
22 them?

23 MR. KLAMANN: I object to the form of the  
24 question. It's vague and ambiguous as to what we're  
25 referring to specifically about the behavior of the

1 cigarettes, whether it's tars or something else. It's  
2 outside the foundation for this witness' experience and  
3 expertise. It calls for an expert opinion, and  
4 insufficient facts have been provided with respect to  
5 the hypothetical as to what's being tested and for what  
6 purposes. For all those reasons, the question's  
7 objectionable.

8 BY MR. OHLEMEYER:

9 Q You may answer it, Doctor.

10 A I would say it's a sample, and it's a test on a  
11 sample. I think we would have to accept information  
12 recognizing that it was a small sample.

13 Q How would you assure yourself that it was a  
14 representative sample?

15 MR. KLAMANN: Same objection.

16 A Well, that the one pack, the cigarettes in the one  
17 pack, were representative of the great majority of  
18 cigarettes that were manufactured under the same label.

19 Q And how would you do that?

20 MR. KLAMANN: Same objection. Outside the  
21 witness' expertise. You're not -- you have not  
22 provided any information to him as to what specifically  
23 you're testing for, and it calls for expert opinion  
24 that may not be appropriate given the lack of  
25 foundation.

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1 BY MR. OHLEMEYER:

2 Q Let me ask you to assume, Doctor, that I --

3 MR. MCFLANEY: Let him finish.

4 BY MR. OHLEMEYER:

5 Q Oh, I'm sorry. You can answer the question.

6 A Well, your question is one that really is not my  
7 problem to answer. This was one reason why within the  
8 Cancer Prevention Committee we were so glad to have  
9 engineers who really understood the different materials  
10 that were the subject of an investigation. It would be  
11 something that the engineers and the chemist in the  
12 tobacco industries could advise us about, whether a  
13 sample was really representative or not, whether the  
14 tobacco that was used came from an area of the tobacco  
15 growing country that was not representative or that  
16 used some pesticide or insecticide that was not  
17 commonly used, things of this nature.

18 Q So you would have to make some effort or rely on  
19 information from other people to assure yourself you  
20 had a representative sample?

21 A Yes.

22 Q Okay. Did your medical background or expertise provide  
23 you with any specialized knowledge during the '50s  
24 about the properties of asbestos as a filter material  
25 or its relationship to other possible types of filter

1 making it into something else, you could develop a  
2 disease known as asbestosis?

3 A Yes.

4 Q And if you developed asbestosis, there was some  
5 evidence to suggest you might be at an increased risk  
6 for the development of lung cancer?

7 A Yes, sir.

8 Q There were some people who thought that evidence  
9 established that fact; there were other people who  
10 weren't so sure, right?

11 A Yes.

12 MR. KLAMANN: I object to the form.

13 BY MR. OHLEMEYER:

14 Q It was a matter of some discussion among researchers at  
15 the time?

16 A Hm-hum.

17 Q And even though -- and you knew that asbestos at that  
18 time was being used in other products, including  
19 filters and including cigarette filters?

20 Well, let me rephrase the question. You learned  
21 at some point during the '50s that asbestos was being  
22 used in building materials and other products?

23 A Yes.

24 Q Including filter material and cigarette filters?

25 A Yes.

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1 material?

2 A No. I believe I was aware that asbestos was used as a  
3 filter material for various liquids.

4 Q Did you drink beer in the '50s?

5 A Yes, sir.

6 Q Did you know at the time it was being filtered through  
7 asbestos?

8 MR. KLAMANN: I object to the form.

9 A I don't think so.

10 BY MR. OHLEMEYER:

11 Q Are you concerned at all about the fact you drank beer  
12 that might have been filtered through asbestos?

13 MR. KLAMANN: I object to the form. It assumes  
14 facts not in evidence. It's argumentive. It calls for  
15 expert conclusions.

16 A Well, I'm not concerned about it. I say that because  
17 we did a study with hamsters exposed to asbestos in  
18 their drinking water and found no evidence for any  
19 harmful effects of the asbestos on the animals, and  
20 certainly no tumors, no introduction of tumors.

21 BY MR. OHLEMEYER:

22 Q Okay. Doctor, just to finish up then. I appreciate  
23 your patience. What you knew in the '50s about  
24 asbestos was that if you worked with raw asbestos in a  
25 mine or in a mill or weaving it into something else or

1 Q And even though you and others were aware of the fact  
2 that occupational exposure to asbestos might create a  
3 risk to certain people, you never made any written or  
4 published recommendation that asbestos shouldn't be  
5 used in building material; is that right?

6 A That's right.

7 Q Or in houses?

8 A Right.

9 Q Or in schools?

10 A Right.

11 Q Or in other consumer products?

12 A Right.

13 Q And that's because using asbestos -- well, strike  
14 that.

15 Is that because there wasn't evidence at that  
16 point in time to suggest that those type of uses of  
17 asbestos could present a risk to the health of the  
18 people who were using those products or around those  
19 who were using them?

20 MR. KLAMANN: I object to the form.

21 A Well, I would say that it -- I was involved in entirely  
22 animal experiments and I relied on what others would  
23 tell me and what others would recommend and what others  
24 would do about such things as actual use of asbestos  
25 and identifying hazardous exposures. This was an



1 epidemiological problem that was studied by  
2 Dr. Selikoff, Dr. Hammond, and the statisticians with  
3 them.  
4 Q And during the 1950s there was no epidemiological  
5 evidence to suggest that using asbestos in building  
6 materials or homes or schools or other consumer  
7 products could present a risk to the health of those  
8 people using them or in proximity or being around other  
9 people using them?

10 A I think that's true.

11 MR. KLAMANN: Objection, form.

12 MR. CHLEMEYER: That's all I have. Thank you very  
13 much, Doctor.

14 MR. RUBIN: I have some questions.

15 MR. CARETTI: I have no questions for Dr. Smith.

16 EXAMINATION

17 BY MR. RUBIN:

18 Q Dr. Smith, I have a few questions. Like you were  
19 asked, if I were to ask you the same questions that I  
20 asked you earlier in the morning, I assume that you  
21 would give the same answers or you hope you would give  
22 the same answers that you gave this morning?

23 A Yes, sir.

24 Q Following up on some questions that you were just asked  
25 with regard to the early '50s -- I think you were asked

1 Q I want to -- I was confused at least to some of the  
2 questions you were asked at the beginning of this  
3 afternoon concerning the alveolar cell, I think you  
4 said, adenocarcinoma?

5 A Yes.

6 Q Or carcinoma and mesothelioma. So I want to try to  
7 clarify at least my own confusion, and perhaps you can  
8 help me with that. There is a distinct tumor known as  
9 an alveolar cell adenocarcinoma?

10 MR. KLAMANN: I object to the form and I move that  
11 the statement by counsel be stricken.

12 BY MR. RUBIN:

13 Q You can answer my question, Doctor.

14 A That is a term that is used for a certain type of  
15 tumor.

16 Q And that type of tumor is a different tumor from a  
17 mesothelioma, correct?

18 MR. KLAMANN: Objection.

19 A Some people feel that some cases of adenocarcinoma,  
20 alveolar cell adenocarcinoma, are actually tumors that  
21 arise from the cells of the pleura.

22 BY MR. RUBIN:

23 Q Well, let's talk --

24 A -- which would -- would make them a mesothelioma.

25 Q The point I'm trying to make, Doctor, is that if you

1 There were some people who believed that asbestos might  
2 have caused lung cancer and there were others that, I  
3 think the words were, weren't so sure.

4 In fact, Doctor, isn't it true that there were  
5 people like Cuyler Hammond who believed that the  
6 evidence was insufficient to establish a  
7 cause-and-effect relationship between asbestos and lung  
8 cancer in the 1950s?

9 MR. KLAMANN: I object to the form.

10 A That's true.

11 BY MR. RUBIN:

12 Q Now, when you -- you were also asked about your trip to  
13 Europe and the report that you made when you came back  
14 to the Cancer Prevention Committee and which was  
15 ultimately transcribed and published in a journal of  
16 the American Medical Association. And when you made  
17 that report to the people at the Cancer Prevention  
18 Committee and wrote -- and the transcription was then  
19 reported in the literature, you told those people that  
20 it was the consensus that a lung tumor hazard formally  
21 existed in this industry in Great Britain but there was  
22 no evidence to show that such a hazard continued to  
23 exist under the working conditions prevailing in the  
24 1950s, correct?

25 A Correct.

1 have a true alveolar cell adenocarcinoma, it arises in  
2 the lung tissue itself, correct?

3 A It should, yes.

4 Q And if you have a mesothelioma, it arises in the  
5 pleural -- in the pleura, the pleural tissue?

6 A Yes, sir.

7 Q So that one -- if one has a tumor which everybody  
8 agrees is an alveolar cell adenocarcinoma, it would be  
9 a tumor that arises in the lung tissue?

10 A Yes.

11 Q And it would not be a mesothelioma, correct?

12 A Yes.

13 Q On the other hand, if you had a mesothelioma, it would  
14 arise in the pleura and it would not be an alveolar  
15 cell adenocarcinoma?

16 A Yes, except that the cells lining the pleura might  
17 produce a tumor that would be very similar to a tumor  
18 produced by cells lining the alveoli within the lung.  
19 There are essentially three different types of  
20 mesotheliomas. One, the epithelial type, which would  
21 be pertinent to what we're talking about. The other, a  
22 sarcomatous type made up of cells that are not  
23 epithelial. And then the third would be halfway  
24 between, a mixed epithelial and sarcomatous  
25 mesothelioma.

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1 Q What -- the point I was trying to make, Doctor, is that  
2 in your discussion about this subject matter earlier  
3 was the point you were trying to make that sometimes  
4 pathologists can confuse a mesothelioma with an  
5 alveolar cell adenocarcinoma?

6 A Yes.

7 Q But for the jury's --

8 MR. KLAMANN: Excuse me. Doctor, if you would  
9 slow down just a little bit, I need to make an  
10 objection. That calls for expert opinion and  
11 testimony, and it's objected to as to form.

12 You might slow down a little bit so that others of  
13 us have a chance here.

14 BY MR. RUBIN:

15 Q So for the jury -- to help the jury understand this, or  
16 at least to help me understand this, what your  
17 testimony -- what you were trying to say earlier was  
18 that there are two different types of tumor -- alveolar  
19 cell carcinomas and mesotheliomas -- and sometimes  
20 pathologists may look at a tumor and mix those two  
21 distinct tumors -- mix them up?

22 A So I've been told.

23 MR. KLAMANN: I'll renew my objection. It calls  
24 for speculation and conjecture. It's outside the  
25 foundation that's been laid with respect to the

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1 fact-witness status of the testimony this afternoon.  
2 It calls for an expert opinion. And in view of the  
3 testimony from the witness that he has been told that,  
4 it is also hearsay and I move to strike it.

5 MR. RUBIN: Well, then I would move to strike all  
6 of your questions that you asked relating to Dr. Hinson  
7 and the alveolar cell carcinomas and the pleural  
8 mesotheliomas, because all of my questions are not  
9 asking this gentleman for expert testimony, but asking  
10 for clarifications of the testimony that he gave to  
11 you; so that if mine is stricken, then I also move to  
12 strike yours for the same reason.

13 MR. KLAMANN: Counsel, there is a difference  
14 between what you're asking him in generalities and what  
15 I was asking for in the way of explanation of his  
16 understanding of what was going on at the time the  
17 reports were made in 1952. Your questions go far  
18 beyond that and ask for general opinions and  
19 conclusions from the witness outside of that context.  
20 You did not make that context clear in the form of your  
21 question and, therefore, there is a significant  
22 difference between what he is testifying about in  
23 relation to the information that he reported in 1952  
24 and the general expert opinion information that you're  
25 trying to solicit from him.

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1 MR. RUBIN: Well, I think the record will speak  
2 for itself. I think I did preface this line of  
3 questions by referring back to the testimony that you  
4 asked him.

5 MR. KLAMANN: The record will speak for itself.

6 BY MR. RUBIN:

7 Q Let me follow up now on this same subject matter,  
8 Doctor. When you received the slides from Dr. Hinson,  
9 whenever that was, he reported that the two cases were  
10 alveolar cell carcinomas, correct? Correct, that's  
11 what he reported -- Dr. Hinson?

12 A That's my recollection.

13 Q And when you were asked questions about the discussion  
14 that appeared in your -- the printed article that  
15 appeared in 1952, do you remember you were asked  
16 several questions about your interchange with  
17 Dr. Cartier?

18 A Yes.

19 Q And Dr. Cartier -- you made the statement that you  
20 would like to exchange slides with him. Do you recall  
21 that?

22 A Yes.

23 Q And in the article you said just prior to that: In  
24 examining pathological material sent us from England by  
25 Dr. Hinson, we found among six cancerous asbestotic

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1 lungs two presenting alveolar cell carcinoma. And then  
2 you said, these tumors are often diagnosed as pleural  
3 mesothelioma. I should very much like to exchange  
4 slides with you.

5 When you made that statement, Doctor, was one of  
6 your concerns that perhaps Dr. Cartier had confused the  
7 pleural mesothelioma and, in fact, those two cases may  
8 have been alveolar cell carcinomas?

9 MR. KLAMANN: I object to the form of the  
10 question. That calls for complete speculation and  
11 conjecture on the part of the witness.

12 BY MR. RUBIN:

13 Q You may answer, Doctor.

14 A There's a possibility.

15 Q Because you were aware at the time that sometimes it  
16 was difficult to distinguish between a mesothelioma and  
17 an alveolar cell carcinoma?

18 A Yes.

19 Q Now, Doctor, in the table that was referred to you,  
20 Table 3 that appears in the discussion of the article  
21 where it lists, I think, eight cases of cancer -- do  
22 you recall generally that table?

23 A Yes, sir.

24 Q The heading on the table says it's the results of  
25 carcinoma detected among 4,000 asbestos workers.

1 Doctor, in 1950 when this information was reported by  
2 Dr. Cartier, you didn't note whether or not there was  
3 any statistical significance to finding two -- assuming  
4 they were mesotheliomas -- to finding two mesotheliomas  
5 in a group of 4,000 asbestos workers, did you?  
6 A No.  
7 Q And lastly, Doctor, prior -- your career was spent  
8 doing research on chemicals or other materials in the  
9 laboratory on animals, correct?  
10 A That's right.  
11 Q And prior to joining Fairleigh Dickinson in 19 -- was  
12 it '58 or '60?  
13 A It was about '58.  
14 Q Prior to joining Fairleigh Dickinson in 1958, the only  
15 research that you had done in your laboratory involving  
16 asbestos resulted in a finding of no tumors as a result  
17 of use of asbestos with your tissue transplant  
18 technique, correct?  
19 A Correct.  
20 MR. RUBIN: Thank you. I have no further  
21 questions.  
22 EXAMINATION  
23 BY MR. WISNIEWSKI:  
24 Q Doctor, my name is Mark Wisniewski and I represent  
25 Owens Corning, and I just have a few questions for you

1 today. And I want to first take you back to your trip  
2 to England in 1950 when you met with Dr. Merewether.  
3 Do you recall that?  
4 A Yes.  
5 Q When you met with Dr. Merewether, did you ever actually  
6 go into the facilities in England; in other words, the  
7 mining facilities or the manufacturing facilities?  
8 A No, sir.  
9 Q Okay. So all of your information that you received,  
10 you would have received through Dr. Merewether?  
11 A Yes.  
12 Q And his interpretation of the level of exposure in  
13 those facilities, correct?  
14 A Correct.  
15 Q And Dr. Merewether was the chief inspector of England?  
16 A Chief inspector of factories.  
17 Q And it was your understanding that after -- the purpose  
18 of Dr. Merewether's investigation was to -- I guess to  
19 better the situation in those factories, correct?  
20 A Correct.  
21 Q And in fact, that's what he did? They brought in  
22 ventilation to some of these factories, correct?  
23 A Yes.  
24 Q And it was your understanding, too, that that  
25 ventilation reduced significantly the risk of

1 asbestosis of those workers, correct?  
2 A Yes, sir.  
3 Q And that's the risk to those millers. And those were  
4 actually textile plants, weren't they, to your  
5 knowledge?  
6 A I understand that the majority of the cases of  
7 asbestosis that Dr. Merewether was talking to me about  
8 and that Dr. Gloyne was talking to me about were --  
9 what did you call them?  
10 Q Textile workers.  
11 A Textile workers.  
12 Q These were actually people that were weaving asbestos  
13 in the cloth. Do you recall that, or Dr. Merewether  
14 talking to you about that?  
15 A Yes, I understand. I believe that the majority were  
16 textile workers.  
17 Q And those were people that were exposed to extremely  
18 high concentrations of raw asbestos fiber?  
19 MR. KLAMANN: I'll object to the form of the  
20 question. It calls for speculation and conjecture. It  
21 lacks foundation. It calls for an expert opinion.  
22 A That I just don't know.  
23 BY MR. WISNIEWSKI:  
24 Q Okay. When you presented it to the -- when you came  
25 back to the United States after visiting in Europe, did

1 you -- how did you -- did you present it to the  
2 United States as these people in Europe were exposed to  
3 extremely high concentrations of asbestos fiber, or how  
4 did you present it?  
5 A I --  
6 MR. KLAMANN: I object to the form, compound.  
7 A -- presented it as Merewether had described it to me,  
8 that the workrooms where this problem had occurred used  
9 to be very dusty; that in 1932, I think it was,  
10 ventilation systems were installed that cut down the  
11 dustiness a great deal; that men who were exposed under  
12 the conditions of the old days often developed severe  
13 acute asbestosis; and that the disease itself had  
14 changed a great deal, not only in becoming less common  
15 in men exposed since 1932, but that the disease was  
16 less extensive and much more slowly progressive.  
17 BY MR. WISNIEWSKI:  
18 Q And that's -- did you draw a comparison between the  
19 exposure in England and the exposures in the  
20 United States textile mills?  
21 A No, sir. I had no numbers to do that.  
22 Q So you didn't make any recommendations in the  
23 United States as to exposures to these textilers in the  
24 United States then?  
25 A I don't recall making any recommendations.

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1 Q Did anybody at that symposium make any recommendations?  
 2 A I don't recall that. I don't think so.  
 3 Q I want to jump ahead about 15 years to Dr. Selikoff in  
 4 1965. Do you recall your testimony about Dr. Selikoff?  
 5 A Yes, sir.  
 6 Q And do you recall -- and I think it was in your  
 7 words -- this was really one of the first  
 8 epidemiological studies regarding exposure to asbestos  
 9 in the United States, correct?  
 10 A I think so, yes.  
 11 Q And it was your recollection that that was a study of  
 12 insulation workers or pipe coverers?  
 13 A I believe they were mostly insulation workers, yes.  
 14 Q Okay. And that was the -- and Dr. Selikoff brought  
 15 into question the TLV, correct?  
 16 MR. KLAMANN: I object to the form. It calls for  
 17 an expert opinion. The document speaks for itself, if  
 18 you're referring to a published document.  
 19 A Correct.  
 20 BY MR. WISNIEWSKI:  
 21 Q And do you recall where that TLV came from?  
 22 MR. KLAMANN: Same objection. Vague and ambiguous  
 23 as well.  
 24 A No.  
 25

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1 BY MR. WISNIEWSKI:  
 2 Q Throughout your history of studying the health effects  
 3 of asbestos, what was your background relating to state  
 4 regulations regarding exposure to asbestos, if any?  
 5 A None.  
 6 Q Are you familiar with the Fleisher-Drinker study?  
 7 A I don't identify those names with any studies that --  
 8 Q Are you familiar of a study of naval shipyards and pipe  
 9 coverers in naval shipyards in the United States?  
 10 A I may have seen such studies.  
 11 Q Did you use that study in any of your research?  
 12 A No, sir.  
 13 Q Or in any of your conversations with any of the other  
 14 industry people that were part of your symposium?  
 15 A No, sir.  
 16 Q Did you use any of the information from the ACGIH, or  
 17 the American Conference of Governmental Industrial  
 18 Hygienists?  
 19 MR. KLAMANN: I object to the form. Vague and  
 20 ambiguous as to any of the information. I don't know  
 21 what you're referring to.  
 22 A I don't -- I don't recall that we had any --  
 23 BY MR. WISNIEWSKI:  
 24 Q Doctor, you'd agree with me -- well, how many of the  
 25 six cases that you received from England -- how many of

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1 those gentleman were tile setters like Mr. Sorise?  
 2 MR. KLAMANN: I object to the form. No  
 3 foundation.  
 4 A I don't know.  
 5 BY MR. WISNIEWSKI:  
 6 Q Okay. Was it your understanding that those six people  
 7 were all miners or millers?  
 8 MR. KLAMANN: I object to the form.  
 9 A Not miners, because there was no mining of asbestos in  
 10 England.  
 11 BY MR. WISNIEWSKI:  
 12 Q Okay. So do you even know who these people were or  
 13 what occupations they were of these six people of the  
 14 slides that were sent from England?  
 15 A No.  
 16 Q Do you even know what type of exposures they had?  
 17 A No.  
 18 Q Do you know if they had any exposure to asbestos?  
 19 A Well, they were sent as lungs from men who had combined  
 20 asbestosis and lung cancer.  
 21 Q But you don't know what they did for a living?  
 22 A What they did and what type of asbestos that they might  
 23 have been exposed to, I don't know.  
 24 Q Okay. You mentioned what type of asbestos they were  
 25 exposed to. Is that an important factor to know?

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1 A I should say yes.  
 2 MR. WISNIEWSKI: Doctor, I'm just looking at my  
 3 notes. I don't think I have any more questions. No  
 4 further questions.  
 5 MR. KLAMANN: Anybody else before I start?  
 6 Mr. Caretti? Mr. McElaney?  
 7 Do you want to take a short break? Let's take a  
 8 break.  
 9 (Whereupon a recess was taken at 2:33 p.m. and the  
 10 videotape deposition resumed at 2:47 p.m.)  
 11 BY MR. KLAMANN:  
 12 Q Doctor, I have a few more questions for you in light of  
 13 some of the things that the lawyers for the defense  
 14 asked you about. First of all, I wanted to ask you:  
 15 Back in the early 1950s when you were involved in  
 16 research, was research sponsored by industry or  
 17 companies?  
 18 MR. WISNIEWSKI: Objection, vague.  
 19 MR. RUBIN: Objection.  
 20 MR. MCELANEY: Objection. Beyond the scope of the  
 21 cross-examination.  
 22 BY MR. KLAMANN:  
 23 Q And, in fact, a good deal -- a majority of the research  
 24 was sponsored by companies, was it not, at that time?  
 25 MR. WISNIEWSKI: Objection, leading.

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<p>1 MR. MCELANEY: Objection.</p> <p>2 MR. RUBIN: Objection.</p> <p>3 BY MR. KLAMANN:</p> <p>4 Q Go ahead.</p> <p>5 A Well, I know that the principal research that I was</p> <p>6 doing at that time was sponsored by Standard Oil of</p> <p>7 New Jersey.</p> <p>8 Q And the research that was being done by your laboratory</p> <p>9 on the health effects of tobacco, that was research</p> <p>10 that was contributed to by the tobacco or cigarette</p> <p>11 companies?</p> <p>12 A I understood so by contributions made by the various --</p> <p>13 some cigarette companies to the Damon Runyon Fund,</p> <p>14 which then made a grant to New York University for</p> <p>15 research on cigarette smoke.</p> <p>16 Q And some of the questions from defense counsel earlier</p> <p>17 related to your research on asbestos and research by</p> <p>18 others on asbestos. Do you recall those questions</p> <p>19 generally?</p> <p>20 MR. MCELANEY: Objection.</p> <p>21 BY MR. KLAMANN:</p> <p>22 Q The questions, for example, from Mr. Ohlemeyer and</p> <p>23 others about other important scientists doing</p> <p>24 asbestos-related research and your discussions with</p> <p>25 them. Do you recall those questions?</p>	<p>1 BY MR. KLAMANN:</p> <p>2 Q Did you attend the Seventh Saranac Symposium?</p> <p>3 A I did.</p> <p>4 Q And did Dr. -- a fellow by the name of Dr. Knox, did he</p> <p>5 attend the Seventh Saranac Symposium?</p> <p>6 A Yes.</p> <p>7 MR. MCELANEY: Objection.</p> <p>8 BY MR. KLAMANN:</p> <p>9 Q And who was Dr. Knox?</p> <p>10 A John Knox was a medical officer for an asbestos company</p> <p>11 in England.</p> <p>12 Q And did you know Dr. Knox?</p> <p>13 A I met Dr. Knox at that meeting.</p> <p>14 Q All right, sir. And at that meeting did Dr. Knox</p> <p>15 indicate that the persons who were present at the</p> <p>16 meeting ought to contact you with information they have</p> <p>17 about asbestos? Do you recall that?</p> <p>18 MR. OHLEMEYER: Objection.</p> <p>19 MR. MCELANEY: Objection.</p> <p>20 MR. WISNIEWSKI: Objection.</p> <p>21 MR. RUBIN: Objection. Beyond the scope and</p> <p>22 leading.</p> <p>23 BY MR. KLAMANN:</p> <p>24 Q Go ahead.</p> <p>25 MR. MCELANEY: Plus hearsay. I also want to say</p>
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<p>1 A No, sir.</p> <p>2 Q I'm sorry?</p> <p>3 A I don't recall.</p> <p>4 Q Let me refresh your recollection then just very</p> <p>5 quickly. Mr. Ohlemeyer asked you about your report to</p> <p>6 other scientists about your findings on asbestos and</p> <p>7 also mentioned in some of his questions work that was</p> <p>8 being done by other scientists, and I wanted to ask</p> <p>9 you. Were you at the time familiar with the Saranac</p> <p>10 Laboratories?</p> <p>11 MR. OHLEMEYER: I object to the form of question</p> <p>12 and move to strike the statement that precedes the</p> <p>13 question.</p> <p>14 MR. RUBIN: It's also beyond the scope.</p> <p>15 BY MR. KLAMANN:</p> <p>16 Q In the 1950s were you aware of the Saranac</p> <p>17 Laboratories?</p> <p>18 A Yes.</p> <p>19 Q Were they doing research on asbestos?</p> <p>20 A Yes, sir.</p> <p>21 Q And, in fact, was there a meeting of scientists</p> <p>22 concerning the subject of asbestos and health effects</p> <p>23 called the Seventh Saranac Symposium?</p> <p>24 MR. RUBIN: Objection, leading.</p> <p>25 A Yes.</p>	<p>1 that I don't know when this conference took place, so</p> <p>2 I'm going to have to reserve the objections regarding</p> <p>3 relevance.</p> <p>4 BY MR. KLAMANN:</p> <p>5 Q Go ahead.</p> <p>6 A I believe that the conference was September 1952.</p> <p>7 Q Yes, sir. And did Dr. Knox announce at the meeting</p> <p>8 that you were collecting data having to do with the</p> <p>9 asbestos health issues?</p> <p>10 A Yes.</p> <p>11 MR. RUBIN: Objection. Same grounds.</p> <p>12 BY MR. KLAMANN:</p> <p>13 Q And did Dr. Knox announce to the conference that those</p> <p>14 who had such data should assist you in that collection</p> <p>15 and provide that data to you?</p> <p>16 A Yes.</p> <p>17 MR. RUBIN: Objection. Same grounds.</p> <p>18 BY MR. KLAMANN:</p> <p>19 Q And, in fact, later, following the conclusion of the</p> <p>20 conference, did you receive any data concerning the</p> <p>21 asbestos health effects from Dr. Knox himself?</p> <p>22 MR. RUBIN: Objection. Same grounds.</p> <p>23 A Yes, I did.</p> <p>24 BY MR. KLAMANN:</p> <p>25 Q What did you -- well, strike that.</p>

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1 What did that data that you received from Dr. Knox  
2 show?  
3 MR. RUBIN: Objection. Beyond the scope. Can I  
4 just have that so I don't have to continue to --  
5 MR. KLAMANN: No, go ahead. You can --  
6 MR. RUBIN: -- just a continuing objection?  
7 MR. KLAMANN: No, you can go ahead and make your  
8 objections.  
9 MR. OHLEMEYER: Okay.  
10 BY MR. KLAMANN:  
11 Q Go ahead, Doctor, if you can answer.  
12 A Oh. Well, the meeting at Saranac was in September of  
13 1952. It was in December of '52 that Dr. Knox wrote to  
14 me and sent me data that he had assembled from men in  
15 the plant where he was the medical officer. And I have  
16 forgotten exactly how many men he was telling me about,  
17 but I think he had 19 cases where there was combined  
18 asbestosis and carcinoma of the lungs.  
19 And that was in December of '52. And then  
20 following that, very shortly after that -- I think it  
21 was in -- sometime in '53 that he sent me a manuscript  
22 that he and Richard Doll had prepared with that data  
23 that Dr. Knox had assembled, Doll being a  
24 statistician. And Knox was a physician, so Knox turned  
25 the data over to Doll and Doll did the things with it

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1 that statisticians do and decided that it was a  
2 significant difference between the frequency of the  
3 lung cancer in the men with asbestosis and in the  
4 general population of England.  
5 Q What did you do with the information that Dr. Knox had  
6 provided to you about the health effects of asbestos?  
7 MR. RUBIN: Same objection.  
8 A I took it to my chief, Dr. Lanza, who turned red in the  
9 face, hanged on the table, told me that cancer  
10 investigators were troublemakers and that I had no idea  
11 how much trouble we created for industries and  
12 insurance companies.  
13 MR. WISNIEWSKI: Objection. Move to strike.  
14 Hearsay, based on the answer.  
15 BY MR. KLAMANN:  
16 Q And Doctor, what happened with respect to your position  
17 and situation in the research and interest that you had  
18 at the Institute for Industrial Medicine at that time  
19 following your sharing of that information from  
20 Dr. Knox with Dr. Lanza?  
21 MR. RUBIN: Objection. Beyond the scope, and also  
22 assumes the relationship --  
23 A Dr. Lanza notified me that my appointment at New York  
24 University would not be renewed.  
25

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1 BY MR. KLAMANN:  
2 Q And did you thereafter write a letter to Dr. Armstrong,  
3 the medical director at New York University?  
4 A Yes, sir.  
5 Q And in that letter did you describe your personal  
6 knowledge concerning Dr. Lanza and his affiliation with  
7 a large asbestos company?  
8 MR. WISNIEWSKI: Objection.  
9 MR. RUBIN: Objection. Beyond the scope,  
10 hearsay.  
11 BY MR. KLAMANN:  
12 Q Go ahead.  
13 A Yes.  
14 Q And does that letter accurately report your personal  
15 knowledge concerning Dr. Lanza's affiliation with what  
16 you characterize as a large asbestos company --  
17 MR. RUBIN: I object --  
18 BY MR. KLAMANN:  
19 Q -- and his work involving research concerning the  
20 health effects of asbestos?  
21 MR. RUBIN: Objection. Same grounds, plus  
22 leading. The previous question was leading too.  
23 A Yes.  
24 BY MR. KLAMANN:  
25 Q Doctor, I know that you have difficulty with your eyes,

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1 but if you could take a look at the document that the  
2 court reporter has just handed you and do the best you  
3 can to tell me whether or not that's the letter that  
4 we've been talking about that you sent to  
5 Dr. Armstrong.  
6 A Yes, sir.  
7 Q And does that letter accurately report the activities  
8 of Dr. Lanza with respect to the matters set out at  
9 Pages 4, 5, and 6 relative to his involvement with the  
10 issue of asbestos health effects research?  
11 MR. RUBIN: Objection, same grounds.  
12 MR. WISNIEWSKI: I'm also going to object  
13 regarding the personal communications between this  
14 witness and New York University as being irrelevant, as  
15 well as opinion testimony.  
16 BY MR. KLAMANN:  
17 Q Were your comments that you make beginning at Page 4  
18 and going on over into Page 5 on the first paragraph of  
19 Page 6 concerning Dr. Lanza's involvement with the  
20 asbestos health effects research true and accurate from  
21 your personal knowledge, Doctor?  
22 MR. RUBIN: Objection, same grounds.  
23 A Yes, sir.  
24 BY MR. KLAMANN:  
25 Q Doctor, there were some questions of you by the

1 attorneys for the defendants about your discussions  
2 with the man introduced to you from Kent, the makers of  
3 Kent. I believe you testified that Dr. Nelson  
4 introduced you to that gentleman?

5 MR. OHLEMEYER: I object to the form of question,  
6 move to strike the speech or statement in front of the  
7 question. And the question's objectionable even in its  
8 present form without the predicate statement.

9 BY MR. KLAMANN:

10 Q Who introduced you to the man that you came to  
11 understand was from Kent?

12 MR. OHLEMEYER: I object. The form of the  
13 question is lacking foundation.

14 BY MR. KLAMANN:

15 Q Go ahead, sir.

16 A Dr. Nelson. Dr. Norton Nelson who was the research  
17 director at New York University --

18 Q And what was --

19 A -- the Institute of Industrial Medicine.

20 Q Was the gentleman who was introduced to you as being  
21 the vice president or president from the maker of Kents  
22 standing right there when the introduction was made?

23 MR. OHLEMEYER: I object to the form of the  
24 question.

25 A Yes.

1 BY MR. KLAMANN:

2 Q He was -- was the gentleman introduced to you from Kent  
3 cigarettes present when the introduction was made or  
4 not?

5 MR. OHLEMEYER: Same objection.

6 A Yes.

7 BY MR. KLAMANN:

8 Q And did that gentleman make any -- a dispute over the  
9 introduction that was made that he was from the maker  
10 of Kent cigarettes?

11 MR. OHLEMEYER: Same objection.

12 A No.

13 BY MR. KLAMANN:

14 Q Did he correct the introduction that had been made by  
15 Dr. Nelson to you?

16 A No.

17 MR. MCELANEY: Objection. Motion to strike.

18 BY MR. KLAMANN:

19 Q And at any time during your tour of the laboratory or  
20 the conversations that you had with that man, did he  
21 ever indicate to you that the introduction that had  
22 been made to you was incorrect?

23 MR. MCELANEY: Objection. Lack of foundation,  
24 hearsay.

25

1 BY MR. KLAMANN:

2 Q That is to say that he wasn't affiliated with Kent?

3 MR. MCELANEY: Objection.

4 A No.

5 BY MR. KLAMANN:

6 Q Now, there were some questions for Mr. Ohlemeyer about  
7 evidence that you reported to scientists, and he asked  
8 you whether or not you ever put in writing any  
9 recommendation not to use asbestos in building  
10 products, for example. Do you recall his questions  
11 along those lines?

12 MR. OHLEMEYER: I object to the form of the  
13 question.

14 MR. MCELANEY: I object to the form of the  
15 question.

16 MR. OHLEMEYER: Move to strike the statement that  
17 precedes the question.

18 MR. KLAMANN: It's just prefatory for foundation.

19 BY MR. KLAMANN:

20 Q Go ahead.

21 A Yes.

22 MR. OHLEMEYER: It's -- well, then it's testimony  
23 from counsel that's not under oath, and I move to  
24 strike it. Counsel, you can't testify. Ask questions  
25 and we'll make objections, but I object to the form of

1 the question.

2 BY MR. KLAMANN:

3 Q Now, the fact of the matter is, though, Dr. Smith, that  
4 you reported directly to the man from Kent about your  
5 concerns over the use of asbestos in a product, didn't  
6 you?

7 MR. OHLEMEYER: I object to the form of the  
8 question.

9 MR. MCELANEY: Objection. Lack of foundation,  
10 leading.

11 A I indicated to him that with such evidence as we had at  
12 the time that it would be -- I think the term I used  
13 was prudent -- that it would be prudent to use some  
14 material other than asbestos as the absorbant in the  
15 filters.

16 BY MR. KLAMANN:

17 Q The recommendation --

18 MR. MCELANEY: Motion to strike as non-responsive  
19 and repetitive.

20 BY MR. KLAMANN:

21 Q The recommendation that you made to the man from Kent  
22 cigarettes was made directly right to his face, am I  
23 right?

24 MR. OHLEMEYER: I object to the form of the  
25 question.

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1 MR. MCELANEY: Objection.  
 2 MR. OHLEMEYER: It lacks foundation.  
 3 A Yes.  
 4 MR. OHLEMEYER: And it's leading.  
 5 A Yes.  
 6 BY MR. KLAMANN:  
 7 Q And at the time that you had the discussions with the  
 8 man from Kent, your concerns were over the carcinogenic  
 9 properties of asbestos --  
 10 MR. MCELANEY: Objection.  
 11 BY MR. KLAMANN:  
 12 Q -- true?  
 13 MR. OHLEMEYER: Objection.  
 14 MR. RUBIN: Objection.  
 15 MR. OHLEMEYER: Leading, lacks foundation,  
 16 argumentative.  
 17 MR. MCELANEY: And not relevant.  
 18 MR. KLAMANN: Withdrawn.  
 19 BY MR. KLAMANN:  
 20 Q At the time you had your discussions with the man from  
 21 Kent cigarettes, did you have any concerns about the  
 22 fact that the use of the asbestos in the filter of the  
 23 cigarettes involved placing the filter in your mouth  
 24 and breathing through it?  
 25 MR. OHLEMEYER: Same objection.

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1 MR. MCELANEY: Objection.  
 2 BY MR. KLAMANN:  
 3 Q Go ahead.  
 4 MR. MCELANEY: Leading, argumentative, and  
 5 relevance.  
 6 A Well, it seemed to me to be a procedure that  
 7 unnecessarily would expose lung tissue to asbestos  
 8 fibers.  
 9 BY MR. KLAMANN:  
 10 Q And did you share with the man from Kent your concerns  
 11 at the time that the asbestos fibers were carcinogenic?  
 12 MR. MCELANEY: Objection.  
 13 MR. OHLEMEYER: Objection to the form of the  
 14 question.  
 15 BY MR. KLAMANN:  
 16 Q Go ahead, sir.  
 17 A Well, I told him what information I had assembled that  
 18 indicated that.  
 19 Q And speaking of the information that was assembled and  
 20 which by -- certainly by the end of 1952 appeared in  
 21 the published medical literature, there was a comment  
 22 in your article about Rhodesian blue and South African  
 23 blue asbestos. Do you recall that?  
 24 MR. MCELANEY: Objection, hearsay.  
 25 A I remember that that is how Dr. Gloyne described the

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1 asbestos that the cases that he studied had been  
 2 exposed to.  
 3 BY MR. KLAMANN:  
 4 Q You say in the article that appeared in the published  
 5 medical literature that the majority of the 17 cases  
 6 studied by Dr. Gloyne were employed at a plant handling  
 7 Rhodesian blue and South African, also blue, asbestos.  
 8 Both these types are more brittle than Canadian white  
 9 asbestos, hence give rise to more dust. Do you recall  
 10 saying that?  
 11 MR. MCELANEY: Objection.  
 12 A I recall reading that just the other day when I  
 13 reviewed that article.  
 14 BY MR. KLAMANN:  
 15 Q And were those your words in this published --  
 16 MR. MCELANEY: Motion to strike, non-responsive.  
 17 BY MR. KLAMANN:  
 18 Q -- medical article that appeared in 1952 concerning the  
 19 dustiness of the blue asbestos?  
 20 A Yes.  
 21 Q And Doctor, while we're on the subject, Mr. Ohlemeyer  
 22 asked you a question earlier about your lack of written  
 23 publication following your meetings with the members of  
 24 the Cancer Prevention Committee in 1952 about Kents and  
 25 asbestos in Kents. But what was your understanding as

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1 to whether or not asbestos was in Kents or in the Kent  
 2 filters after you inquired about that?  
 3 MR. OHLEMEYER: I object to the form of the  
 4 question.  
 5 MR. MCELANEY: Objection.  
 6 BY MR. KLAMANN:  
 7 Q Go ahead.  
 8 MR. OHLEMEYER: The question is incomprehensible  
 9 as phrased and I move to strike the predicate  
 10 statement.  
 11 BY MR. KLAMANN:  
 12 Q Go ahead, Doctor.  
 13 A Could you repeat that question to me?  
 14 Q I'd be happy to, thank you.  
 15 Mr. Ohlemeyer asked you a series of questions  
 16 where he was talking about the fact of your publication  
 17 or lack thereof of information concerning the Kent and  
 18 asbestos until you talked to Mr. Crick. But what was  
 19 your understanding of what had happened to the asbestos  
 20 in the Kent cigarettes?  
 21 MR. OHLEMEYER: I object to the form of the  
 22 question. It lacks foundation.  
 23 MR. MCELANEY: And I object.  
 24 A Well, I had mentioned my meeting with the man from Kent  
 25 to a Dr. Hammond who was the chairman of the committee,



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1 the Cancer Prevention Committee, and had -- he was  
2 doing a lot of research on cigarette smoking and habits  
3 in relation to current incidences of lung cancer in  
4 people, and so I mentioned that meeting to him. And it  
5 was sometime later that he told me that they -- that  
6 the Kent people had switched to some other kind of  
7 filter --

8 MR. MCELANEY: Motion to strike, hearsay.

9 BY MR. KLAMANN:

10 Q Now --

11 A -- other than asbestos.

12 Q So it was your understanding that asbestos had been  
13 taken out of the filter; it was a moot point?

14 MR. MCELANEY: Objection, leading.

15 MR. OHLEMEYER: I object to the form of the  
16 question.

17 BY MR. KLAMANN:

18 Q Am I right?

19 A Yes, sir.

20 Q And, ultimately, that was the prudent thing to do --

21 MR. OHLEMEYER: I object to the form of the  
22 question.

23 MR. MCELANEY: Objection.

24 BY MR. KLAMANN:

25 Q -- as you had told them?

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1 MR. OHLEMEYER: Same objection.

2 A I think so.

3 BY MR. KLAMANN:

4 Q Now, I want to go to a few questions that Mr. Rubin  
5 from Owens Illinois had ask you. He asked you about  
6 some experiments that you did concerning asbestos in  
7 drinking water and --

8 MR. RUBIN: I object. I did not refer to drinking  
9 water at all in my examination.

10 MR. KLAMANN: If you don't mind, sir.

11 Q There was a question from Mr. Rubin of Owens --  
12 representing Owens Illinois where the subject of work  
13 that you had done involving hamsters and drinking  
14 water. Do you recall that?

15 A Yes.

16 MR. RUBIN: Objection. I did not refer to  
17 drinking water.

18 BY MR. KLAMANN:

19 Q And the -- that was not an inhalation exposure to  
20 asbestos; that was swallowing?

21 A Yes.

22 Q And that's something different than puffing or inhaling  
23 upon a cigarette filter and drawing the smoke into your  
24 lungs rather than hamsters drinking water that goes  
25 into other organs, isn't it?

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1 A Yes.

2 MR. OHLEMEYER: I object to the form of the  
3 question.

4 MR. MCELANEY: As well on the grounds that this  
5 witness has been tendered as a fact not an expert  
6 witness.

7 BY MR. KLAMANN:

8 Q Now, Mr. Rubin also asked you -- that is to say

9 Mr. Rubin representing Owens Illinois -- asked you some  
10 questions about alveolar cell cancer?

11 A Yes, sir.

12 Q Back in the late 1940s and early 1950s mesothelioma was  
13 sometimes called alveolar cell cancer, wasn't it?

14 MR. RUBIN: Objection, leading.

15 MR. OHLEMEYER: I object to the form of the  
16 question.

17 BY MR. KLAMANN:

18 Q Strike that.

19 Was alveolar cell cancer sometimes -- strike  
20 that.

21 Was mesothelioma cancer sometimes called alveolar  
22 cell cancer back in the late '40s and early '50s?

23 MR. RUBIN: Objection, leading. It's also

24 ambiguous as to what you mean by the verbs you used.

25 A I believe it was.

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1 BY MR. KLAMANN:

2 Q There were a number of different terms that were  
3 synonymous with mesothelioma at that time, were there  
4 not --

5 MR. OHLEMEYER: Objection.

6 BY MR. KLAMANN:

7 Q -- such as endothelioma.

8 MR. OHLEMEYER: Objection.

9 A Yes, sir.

10 BY MR. KLAMANN:

11 Q Mesothelioma was also called endothelioma in the  
12 late '40s and early '50s; am I right?

13 A That's correct.

14 Q Now, Mr. Rubin suggested that Dr. Cartier may have  
15 mischaracterized alveolar cell carcinoma as  
16 mesothelioma when he reported the mesotheliomas to  
17 you. Do you recall that question?

18 A Yes.

19 Q The fact of the matter, though, is that Dr. Cartier did  
20 characterize those cancers as mesothelioma, a  
21 characterization which appears in the peer-reviewed  
22 published medical literature; am I right?

23 MR. RUBIN: Objection, leading.

24 A Yes.

25

1 BY MR. KLAMANN:

2 Q And you would have expected that characterization in  
3 the report to be accurate in view of the fact that it  
4 appeared in the peer-review published medical  
5 literature?

6 MR. OHLEMEYER: Objection, leading. Lack of  
7 foundation for him to know what was accurate. And  
8 secondly, there's no evidence that was a peer-reviewed  
9 literature.

10 BY MR. KLAMANN:

11 Q This --

12 MR. RUBIN: The discussion portion was not  
13 peer-review.

14 MR. KLAMANN: Withdrawn.

15 Q The report of the findings of Dr. Cartier concerning  
16 the mesotheliomas, that was published in the AMA  
17 Archives of Industrial Hygiene and Occupational  
18 Medicine? Am I right about that?

19 A Yes.

20 Q AMA stands for American Medical Association?

21 A Yes, sir.

22 Q And in 1952, at the time this data was reported in that  
23 journal, was this a reputable and authoritative  
24 journal?

25 A Yes, sir.

1 Q And was there any expectation that the information  
2 reported in the journal, for example, that concerning  
3 mesothelioma from Dr. Cartier, should be accurate?

4 MR. WISNIEWSKI: Objection.

5 MR. OHLEMEYER: Objection, leading. No foundation  
6 on his part. That's a discussion portion of the  
7 article. Even if the rest of it was scientific  
8 reports, the discussion portion is not.

9 BY MR. KLAMANN:

10 Q Go ahead, sir.

11 MR. WISNIEWSKI: Calls for an opinion of a fact  
12 witness.

13 BY MR. KLAMANN:

14 Q Would you have expected the information to be accurate  
15 in view of the fact it appeared in this AMA journal?

16 MR. RUBIN: Objection. Same grounds.

17 A Yes.

18 BY MR. KLAMANN:

19 Q Now, Mr. Rubin also asked you about the statistical  
20 significance of Dr. Cartier's report of mesotheliomas  
21 among 4,000 workers. If I've done my math right, the  
22 two mesotheliomas in that group would be one  
23 mesothelioma per 2,000.

24 First of all, let me ask you, you characterized  
25 mesothelioma in this article in the AMA Archives of

1 Industrial Hygiene and Occupational Medicine as a rare  
2 tumor. Do you recall that?

3 A Yes, sir.

4 Q And it was a rare tumor?

5 A Right.

6 Q It remains a rare tumor even today?

7 A Right.

8 Q And yet, Dr. Cartier was reporting -- strike that.

9 Do you have knowledge of information concerning  
10 the frequency of the appearance of mesothelioma in the  
11 population which is not exposed to asbestos?

12 MR. WISNIEWSKI: Objection.

13 MR. RUBIN: Objection.

14 MR. OHLEMEYER: Objection to the form of the  
15 question. It calls for previously undisclosed expert  
16 testimony.

17 BY MR. KLAMANN:

18 Q Well, let me rephrase it then. Back at the time that  
19 this article appeared reflecting the data on  
20 mesothelioma from Dr. Cartier, did you have any  
21 statistics at hand as to the frequency with which  
22 mesothelioma, by that name or the other names that were  
23 given to it at the time, appeared in the population not  
24 exposed to asbestos?

25 MR. RUBIN: Objection to your question. There

1 were not other names that were given to mesothelioma.

2 BY MR. KLAMANN:

3 Q Go ahead.

4 MR. RUBIN: It's a mischaracterization.

5 A I remember a paper in a good medical journal on the  
6 incidence of mesothelioma in various groups of people  
7 with no known exposure to asbestos, so there was  
8 information about the frequency of mesothelioma in the  
9 general population and then in people with -- who had  
10 no known exposure to asbestos. But that article did  
11 mention that mesothelioma was more common in people  
12 with exposure to asbestos.

13 BY MR. KLAMANN:

14 Q Yes, sir. And in fact, how common or uncommon was it  
15 in people who were not exposed to asbestos back at that  
16 era?

17 MR. RUBIN: I'll object to the questions. We have  
18 no time frame that -- he hasn't mentioned when that  
19 article was published. It's hearsay as to -- as to  
20 him, and there's no foundation. To the extent these  
21 are asking for expert opinions, it's beyond the scope  
22 of his expertise.

23 A I don't recall the numbers that were quoted in that  
24 article.

25

1 BY MR. KLAMANN:  
2 Q At the time you saw the numbers from Dr. Cartier, did  
3 you consider 1 in 2,000 to be a high, medium, or low  
4 incidence of mesothelioma?  
5 MR. OHLEMEYER: Objection.  
6 MR. WISNIEWSKI: Objection.  
7 MR. OHLEMEYER: Calls for previously undisclosed  
8 expert testimony.  
9 A I should say high.  
10 BY MR. KLAMANN:  
11 Q Yes, sir. And in fact, at the time this article  
12 appeared of the eight cases presented by Dr. Cartier  
13 and the six presented by Hinson, there were four that  
14 could be characterized as mesotheliomas?  
15 MR. WISNIEWSKI: Objection to the form.  
16 MR. RUBIN: Objection, leading.  
17 BY MR. KLAMANN:  
18 Q Am I right?  
19 A Well, Hinson did not diagnose mesothelioma, as I recall  
20 it. In his two the pathologist that reviewed them, for  
21 me, raised that question.  
22 Q Nevertheless, taking what your pathologist had  
23 concluded and what Dr. Cartier found in the eight cases  
24 from Dr. Cartier of cancer and the six from Hinson,  
25 making a total of 14, four could be characterized as

1 mesothelioma?  
2 MR. RUBIN: Objection.  
3 BY MR. KLAMANN:  
4 Q Am I -- is that correct, Doctor?  
5 MR. RUBIN: Objection.  
6 MR. OHLEMEYER: I object to the form of the  
7 question.  
8 MR. RUBIN: I object to the form. He also said  
9 that his pathologist raised the question. He didn't  
10 say he diagnosed mesothelioma.  
11 BY MR. KLAMANN:  
12 Q Go ahead.  
13 A Well, I think that's -- what we could say would be that  
14 of the cases that you're talking about there, there  
15 -- were four possible mesotheliomas.  
16 Q Yes, sir. And that was in 1952?  
17 A '52. No, '50.  
18 Q Now --  
19 A '50.  
20 Q Yes, sir, it was '50. But the meeting took place  
21 in '52 that the article was published?  
22 A Yes. The article was published not until '52 because  
23 there were other meetings of the committee and there --  
24 the talks that were presented there were published with  
25 the -- with my talk. And we published the proceedings

1 of several years in one volume of the -- of the  
2 journal.  
3 Q Doctor, Mr. Rubin for Owens Illinois also asked you  
4 about some comments that appear in the AMA Archives  
5 article about the dust control methods and the severity  
6 of asbestosis improving with the implementation of  
7 methods to reduce exposures. Do you recall those  
8 questions?  
9 MR. RUBIN: I object. I did not ask him. I read  
10 one sentence, and it was not that sentence.  
11 BY MR. KLAMANN:  
12 Q Go ahead, Doctor. You can answer.  
13 A Could you refresh my memory on those questions?  
14 Q There were some question from -- from Mr. Rubin  
15 representing Owens Illinois, where he talked about the  
16 references to dust control methods in Great Britain and  
17 the references to -- I think in your response you --  
18 you commented upon the decreasing severity of  
19 asbestosis as a result of those controls over exposure  
20 to asbestos. Does that help?  
21 A Yes, I remember.  
22 MR. RUBIN: I object. I did not ask that  
23 question. The question I related to was about the  
24 existence of a tumor -- the hazard currently versus in  
25 the past. That's all I asked him.

1 BY MR. KLAMANN:  
2 Q Now, Doctor, at that time there was a body of medical  
3 literature that discussed latency with respect to  
4 asbestos disease, was there not?  
5 MR. OHLEMEYER: Objection.  
6 MR. WISNIEWSKI: Objection, leading.  
7 MR. RUBIN: Objection. Beyond the scope, leading,  
8 and calls for expert testimony.  
9 BY MR. KLAMANN:  
10 Q Go ahead.  
11 MR. OHLEMEYER: No, I object to this,  
12 Mr. Klamann. It's 3:30 in the afternoon. You have a  
13 witness that you have been aware of and consulted with  
14 for more than a year and you have spent the last  
15 hour-and-a-half trying to illicit expert testimony from  
16 that has not been previously disclosed or described to  
17 us. I object to this and reserve my right to either  
18 continue or re-notice the deposition, object to its use  
19 at trial, and certainly intend to move to exclude all  
20 of the opinion testimony you've sought to illicit from  
21 the witness.  
22 But I really would suggest you confine your  
23 questioning to, A, matters that were brought up on the  
24 cross-examination of the witness following your direct  
25 examination; or B, factual matters that pertain to

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1 issues of relevance to this lawsuit, not expert  
2 opinions that you have not provided us with or made us  
3 aware of prior to the deposition.

4 MR. KLAMANN: Mr. Ohlemeyer, if you're going to  
5 make suggestions to me, let me make one back to you.  
6 And that is that first of all you should characterize  
7 things that you're representing on the record  
8 accurately. This business of what my questions have  
9 amounted to for the last hour-and-a-half is a gross  
10 exaggeration and misrepresentation of the record both  
11 as to timing and as to what is going on.

12 I think the record will be perfectly and  
13 abundantly clear that this examination is in follow-up  
14 to matters that were opened up by defense counsel in  
15 their cross-examination who over my objections about  
16 foundation and expert opinion testimony persisted in  
17 asking questions along these lines.

18 Now, I have objected to those questions. The  
19 questions and the answers should not be allowed from  
20 the defense counsel. But in the event that -- that  
21 those questions and answers stand, I'm entitled and I  
22 intend to conduct appropriate follow-up on redirect  
23 examination in light of those areas of inquiry that  
24 were opened up by defense counsel, and that's precisely  
25 what I'm doing.

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1 So --

2 MR. WISNIEWSKI: John, John, before you ask the  
3 question, I only see this necessary at this point on  
4 behalf of Owens Corning that I found out about this  
5 witness last -- last week. There was no representation  
6 of who this witness was. It's my understanding that  
7 there were -- there were meetings or conversations with  
8 the judge about this meeting and motions filed about  
9 this meeting -- about this witness that I was never  
10 given notice of for whatever reason, so I came into  
11 this deposition with very little information on this  
12 witness without the ability to be present at these  
13 motions regarding this witness and regarding this  
14 deposition.

15 I feel that Owens Corning has been highly  
16 prejudiced. It's my understanding with conversations  
17 with plaintiff's counsel that this witness was a  
18 factual witness potentially against the cigarette  
19 manufacturers and not against Owens Corning or any of  
20 the, quote, unquote, manufacturer defendants or product  
21 defendants. This deposition has turned into a  
22 state-of-the-art deposition.

23 MR. KLAMANN: And that's certainly -- Mark, if  
24 you're done, let me make the comment it was not and is  
25 not our intention that the deposition become a

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1 state-of-the-art deposition, as I represented, you  
2 know; that our initial direct examination was intended  
3 to -- to delve into facts known by the witness and to  
4 make a record of those facts. I can't help it if  
5 defense counsel insist upon getting into matters that  
6 go beyond the scope of the direct and/or open up  
7 matters of expert testimony.

8 And I am concerned that I -- in view of the fact  
9 that they have done that I not sit silent at this point  
10 and not illicit testimony that has a direct bearing  
11 upon some of the things that defense counsel opened up  
12 and got into. I can't help that.

13 You'll have to -- to raise your arguments, and  
14 they'll be addressed. I think that probably the  
15 position that Mr. McClain would take is that this  
16 should be a fact deposition. That's where we started,  
17 that's what we intended to do; but unfortunately, that  
18 has not been where it's been left by defense counsel  
19 who opened up several of these issues. And I cannot  
20 sit here and let them -- let those issues stand without  
21 some effort on my part to address them in redirect.

22 So furthermore, I don't know whose obligation it  
23 was to notify you of a hearing or motions made by  
24 whomever with respect to the deposition and notice. I  
25 do note, though, that this witness has testified on

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1 more than one occasion in the past, and that's apparent  
2 from the knowledge that other defense counsel have  
3 concerning his testimony. In fact, citations to  
4 depositions that he had been given in the past were  
5 made by Mr. Rubin in his questions originally and --

6 MR. WISNIEWSKI: Well, John, what others have is  
7 completely irrelevant. I just want on the record that  
8 obviously there were motion hearings about this  
9 witness. There was testimony or telephone  
10 conversations with the judge. I don't know what  
11 actually occurred. All I know is that Owens Corning  
12 was never given notice to any of that, and for that  
13 reason I think that Owens Corning coming here today was  
14 extremely prejudiced based on -- whether any of this  
15 state-of-the-art testimony gets in or not is for others  
16 to decide.

17 I understand your position that you're trying to  
18 protect yourself, but I -- I needed to protect  
19 Owens Corning, to sit there and say that I feel that  
20 Owens Corning has been sandbagged and has been  
21 prejudiced by not being involved in the original motion  
22 hearings regarding this witness. I was never given  
23 notice of any of this -- any of this witness, and I  
24 came prepared to this deposition prepared to sit  
25 through a factual witness who, quote, unquote,

1 allegedly was a fact witness against the cigarette  
2 manufacturer and has now turned into a very  
3 knowledgeable witness about state-of-the-art all the way  
4 back to the 1930s.

5 MR. KLAMANN: Well, you know, those are the kinds  
6 of things that I think can and ought to be taken up  
7 later, and the place to start is probably with  
8 Mr. McClain. And then if you can't get things resolved  
9 with him -- and he's easy to get things resolved with,  
10 I think it's been your experience -- then we can go  
11 somewhere else from there.

12 But let me finish up here real quickly and then  
13 we'll --

14 MR. WISNIEWSKI: I hope that I can get a result,  
15 not that you finish up real quick.

16 MR. RUBIN: Let me just make sure the record is  
17 clear that I join in the objection of both defense  
18 counsel. I don't know what Owens Illinois' knowledge  
19 was with regard to this hearing; but to the extent they  
20 were in the same position, then I --

21 MR. CRICK: They were not, because I talked to  
22 Bob Bunda last week about this deposition.

23 MR. RUBIN: I don't know what their knowledge  
24 was. I'm joining in both objections, just so the  
25 record is clear.

1 BY MR. KLAMANN:

2 Q Well, if everybody's done making their records, let me  
3 see if we can get done with this deposition.

4 Doctor, in reference to questions and some subject  
5 matter that Mr. Rubin for Owens Illinois introduced in  
6 his questions with you about the severity of asbestosis  
7 and then the less severe asbestosis as relating to the  
8 dust control and reductions in asbestos exposure  
9 issues, let me get back to that.

10 At the time that all of this was written in the  
11 AMA Archives, was there any understanding on your part  
12 as to whether or not the severity of the dust exposures  
13 and the severity of the asbestosis had any affect on  
14 the latency period?

15 MR. RUBIN: Objection. Reasons said before.

16 A The latency period of what?

17 BY MR. KLAMANN:

18 Q For asbestosis?

19 A As I understood it, the heavier the exposure, the  
20 shorter the latent period.

21 Q Yes, sir. And what does that mean, the shorter the  
22 latent period? What is the latent period?

23 A Well, if I remember what I was told by the -- by  
24 Dr. Mercwether and also by Dr. Gloyne and Dr. Wyers,  
25 the principal people that I saw in England on the

1 asbestos story, they were telling me that the disease  
2 asbestosis, in the old days when the workrooms were  
3 very dusty, was often a disease that had built up very  
4 quickly within a matter of months and led sometimes to  
5 death within less than a year; and that since the  
6 ventilation devices were installed in the workrooms,  
7 people who had been employed there only since the time  
8 that those ventilation requirements were met, the  
9 occurrence of asbestosis was much less frequent and the  
10 disease was a much different disease because it  
11 developed only very slowly and was much milder.

12 Q Now, what was the understanding on your part at the  
13 time this article was written in 1952 of the latent  
14 period for lung cancer?

15 A Well --

16 MR. MCELANEY: Objection.

17 MR. OHLEMEYER: Can I have a continuing objection  
18 to this line of question?

19 BY MR. KLAMANN:

20 Q Go ahead.

21 MR. OHLEMEYER: Counsel, do I have a continuing  
22 objection?

23 MR. KLAMANN: No, make your objections.

24 MR. OHLEMEYER: My objection is to the -- to the  
25 form of the question, as lacking foundation, and as

1 calling for expert opinion not previously disclosed.

2 BY MR. KLAMANN:

3 Q What was -- go ahead, Doctor. Do you have the question  
4 in mind?

5 A Well, the ventilation regulations were adopted and put  
6 through in 1932. And I was told when I was there in  
7 1950 that men that had been employed in the asbestos  
8 industry only since the ventilation regulations had  
9 been followed up, there had been by that time, I think,  
10 only one case where there had been a bronchogenic  
11 carcinoma.

12 Q And in light of the -- my question actually had to do  
13 with the latency period that was expected at that time  
14 for a bronchogenic carcinoma or lung cancer.

15 And what was the expectation among these  
16 researchers at that time for the latency period having  
17 to do with lung cancer?

18 MR. MCELANEY: Objection. Lack of foundation.

19 BY MR. KLAMANN:

20 Q If you know.

21 MR. MCELANEY: Expert testimony.

22 A Well, I can't remember exactly how they calculated it  
23 then, but it was in years.

24 BY MR. KLAMANN:

25 Q Would --

1 MR. MCELANEY: Motion to strike.  
2 BY MR. KLAMANN:  
3 Q -- the fact as you had learned it, that the heavy  
4 exposures was -- were producing death in a relatively  
5 short period of time, have impacted upon the appearance  
6 of lung cancer; that is to say the men would have died  
7 from asbestosis before the latency period for lung  
8 cancer had run its course?  
9 MR. OHLEMEYER: Objection.  
10 MR. RUBIN: Objection, leading.  
11 BY MR. KLAMANN:  
12 Q Was there any understanding of that at the time?  
13 MR. OHLEMEYER: And calls for expert testimony not  
14 previously disclosed.  
15 MR. MCELANEY: Lack of foundation.  
16 A That could have been.  
17 BY MR. KLAMANN:  
18 Q And further, Doctor -- I'm sorry.  
19 A As I recall, the -- I'm trying to remember now -- the  
20 latency period for lung cancer that Dr. Gloyne figured  
21 out from the cases that he studied -- among the 19  
22 cases that he had, 17 cases, I think -- I believe he  
23 found the latency period to be somewhere between -- it  
24 ranged, ranged from 2 to about 20 years, and the median  
25 was somewhere in between those.

1 So when he was talking to me in 1950, and the  
2 ventilation regulations had been put through in 1932  
3 for men who had been first employed in the industry  
4 when or after the ventilation requirements were put  
5 through, there was only one case that he had a record  
6 of, of a lung cancer that had developed at that time.  
7 Q And the period or the latent period within which lung  
8 cancer would be expected to develop -- if it was 20 or  
9 more years at the time, why, it had been less than  
10 20 years as of 1950 since those regulations had been  
11 put in place? Would that be right?  
12 MR. RUBIN: Objection.  
13 MR. OHLEMEYER: I object to the form of the  
14 question as leading and lacking foundation.  
15 BY MR. KLAMANN:  
16 Q Go ahead.  
17 MR. MCELANEY: Misstates testimony.  
18 A Yes, that's right. That -- that figures right.  
19 BY MR. KLAMANN:  
20 Q And so you wouldn't have expected, particularly where  
21 the exposures were more controlled and the asbestosis  
22 less severe, to have seen the full compliment of lung  
23 cancer from those exposures within the short period of  
24 time again?  
25 MR. OHLEMEYER: Same objection.

1 MR. RUBIN: Objection.  
2 MR. MCELANEY: Objection.  
3 BY MR. KLAMANN:  
4 Q Go ahead, sir.  
5 MR. MCELANEY: Same grounds.  
6 A That was the question, yes. That was the --.  
7 BY MR. KLAMANN:  
8 Q Now, Doctor, you were asked some questions on  
9 cross-examination by the defense attorneys about  
10 whether or not an epidemiologic study had been done of  
11 low-level exposures as of the early 1950s. Do you  
12 recall those questions?  
13 A No.  
14 Q All right. At any rate, on the subject of whether or  
15 not epidemiologic studies had been done of lower-level  
16 exposures in the 1950s, would you have thought that it  
17 would be prudent to wait until the work of Selikoff  
18 before advising people to stay away from carcinogens?  
19 MR. WISNIEWSKI: Objection to the form of the  
20 question.  
21 MR. OHLEMEYER: Objection, leading.  
22 MR. RUBIN: Objection.  
23 MR. OHLEMEYER: It's argumentative.  
24 MR. WISNIEWSKI: It misstates the attorney's  
25 testimony.

1 BY MR. KLAMANN:  
2 Q Excuse me. Let me rephrase it. Do you think that in  
3 light of the carcinogenic properties of asbestos that  
4 you've described for us today that it was prudent to  
5 wait until epidemiologic studies had -- well, strike  
6 that.  
7 Doctor, at the time that you were talking with the  
8 Kent man, did you believe that there was a known safe  
9 level for exposure to asbestos when it came to cancer?  
10 MR. OHLEMEYER: I object to the form of the  
11 question as being leading and argumentative.  
12 A I did not.  
13 MR. MCELANEY: It also lacks foundation.  
14 MR. KLAMANN: That's all I have. Thank you very  
15 much, Doctor, for coming today.  
16 FURTHER EXAMINATION  
17 BY MR. OHLEMEYER:  
18 Q I've just got a few, Doctor. I know you've been  
19 patient and it's been a long day.  
20 But during the 1950s there was some evidence to  
21 suggest that there was a minimum level of exposure  
22 necessary to create a risk for developing cancer as a  
23 result of exposure to asbestos, and that was the level  
24 of exposure necessary to cause asbestosis; isn't that  
25 right?

1 A I believe so.  
2 Q And the carcinogenic potential or properties of  
3 asbestos as Mr. Klamann described them were a matter of  
4 some debate during the 1950s?  
5 MR. KLAMANN: Objection. Asked and answered  
6 several times in both series of cross-examinations --  
7 A That's true.  
8 MR. KLAMANN: -- conducted by you, Mr. Ohlemeyer.  
9 A Yes.  
10 BY MR. OHLEMEYER:  
11 Q And it's fair to say that we have spent some time today  
12 talking about asbestos, haven't we?  
13 A Yes.  
14 MR. KLAMANN: Objection.  
15 BY MR. OHLEMEYER:  
16 Q And the focus of your trip to England in the 1950s and  
17 the focus of your research in the 1960s wasn't on  
18 asbestos in and of itself, was it?  
19 A I did other things. Asbestos was the principal one.  
20 Q But what you were --  
21 A In the '60s.  
22 Q In the '60s.  
23 A In the '60s.  
24 Q In the '50s --  
25 A In the '50s, no.

1 Q -- the purpose of your trip to England and the title of  
2 your paper dealt with occupational risks to health --  
3 A That's correct.  
4 Q -- that included a variety of other substances that  
5 were being used in the workplace and thought to present  
6 a risk of health to the worker?  
7 A Hm-hmm.  
8 Q Is that right?  
9 A Yes.  
10 Q Okay. You talked about --. In the 1950s the  
11 information that you collected and assembled and  
12 published with respect to asbestos dealt with the risk  
13 of cancer resulting from a prior exposure to raw  
14 asbestos in a workplace environment?  
15 A Correct.  
16 Q And even though there was a risk that people who had  
17 worked with raw asbestos and developed asbestosis might  
18 develop lung cancer, asbestos was still being used and  
19 considered useful in a variety of other products at  
20 that time?  
21 MR. KLAMANN: Objection. Calls for expert  
22 opinion.  
23 A Yes.  
24 MR. KLAMANN: Lacks foundation.  
25

1 BY MR. OHLEMEYER:  
2 Q It was used in building materials and consumer products  
3 until the 1970s?  
4 MR. KLAMANN: Objection. Lacks foundation, calls  
5 for expert opinion, calls for speculation.  
6 A I believe so.  
7 BY MR. OHLEMEYER:  
8 Q And Doctor, the visit you told us about that  
9 Mr. Klamann asked you about -- let me rephrase the  
10 question.  
11 During the 1950s you were at NYU doing research  
12 into chemical carcinogenesis?  
13 A Yes.  
14 Q And that included a study of cigarette smoke?  
15 A Yes, sir.  
16 Q And you got visits on more than one occasion during  
17 that time period from people affiliated with the  
18 cigarette industry or cigarette companies; isn't that  
19 right?  
20 A Well, curiously, I don't remember talking with people  
21 from the cigarette companies once we started the  
22 program. I believe that the meetings with people from  
23 the cigarette companies who supplied the cigarettes and  
24 also the advice about what compounds were in them, such  
25 as flavoring agents or maybe insecticide residue and so

1 forth, that information funneled through Dr. Norton  
2 Nelson who was the director of the institute's  
3 research, director of the institute, and Dr. Kosak, the  
4 chemist.  
5 Q And is it accurate, Doctor, that everything you know  
6 about the affiliation or employment or identity of any  
7 specific individual that you talked to with respect to  
8 cigarettes or from a cigarette company was what  
9 Dr. Nelson told you about that person?  
10 MR. KLAMANN: Objection.  
11 A I would say so, yes.  
12 BY MR. OHLEMEYER:  
13 Q And finally, Doctor, because the jury may not hear this  
14 examination in the precise order it occurred, I want to  
15 ask you just a couple questions.  
16 Is it -- am I correct that this morning we started  
17 an examination where I asked you questions; is that  
18 right?  
19 A Yes.  
20 Q And then after my examination, a couple of the other  
21 lawyers who represent the defendants to this lawsuit  
22 asked you some questions?  
23 A Yes.  
24 Q And we took a lunch break?  
25 A Yes.

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1 Q And you had lunch -- did you have lunch with  
2 Mr. Klamann?  
3 A No. I had lunch by myself in my room, which is just  
4 across the hall.  
5 Q Did you have a -- did you have a chance to speak with  
6 Mr. Klamann or Mr. Crick during lunch?  
7 A Quickly, just before we came over to start the  
8 afternoon hearing.  
9 Q And then we started at 12:30, and Mr. Klamann asked you  
10 questions?  
11 A Yes.  
12 Q And then the rest of us had a chance to ask you some  
13 follow-up questions?  
14 A Right.  
15 Q And then Mr. Klamann asked you some other questions?  
16 A Yes, sir.  
17 Q And here we are.  
18 A Right.  
19 MR. OHLEMEYER: Okay. Doctor, thank you very  
20 much. You've been very patient.  
21 Counsel, for the record, I'd like both sessions of  
22 the deposition to be transcribed and collected and  
23 distributed as one transcript.  
24  
25

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1 FURTHER EXAMINATION  
2 BY MR. RUBIN:  
3 Q At the risk, I do have a couple more questions.  
4 Doctor, I want to ask you a few more questions about  
5 alveolar cell carcinoma and mesothelioma that you were  
6 asked about in redirect, I guess.  
7 Doctor, is it your recollection in the 1950s there  
8 was a controversy among scientists as to whether or not  
9 there even existed a separate tumor arising in the  
10 pleura?  
11 MR. KLAMANN: Objection. Lacks foundation. Calls  
12 for expert opinion.  
13 A I don't know, but let's say that I wouldn't be  
14 surprised.  
15 BY MR. RUBIN:  
16 Q And Doctor, one of the reasons that you wanted  
17 Dr. Carrier to send you or exchange slides and send you  
18 his slides was to determine whether or not the tumor  
19 cells that were on his slides were an alveolar cell  
20 carcinoma arising in the lung tissue itself or whether  
21 they were a mesothelioma arising in the pleura,  
22 correct?  
23 A True.  
24 MR. RUBIN: Thank you. No further questions.  
25

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1 FURTHER EXAMINATION  
2 BY MR. WISNIEWSKI:  
3 Q Dr. Smith, I only have three very short questions. The  
4 letter that you sent to NYU --  
5 A Yes.  
6 Q -- after you had a small dispute with Mr. Lanza --  
7 A Yes.  
8 Q -- where was that letter published in the scientific  
9 literature?  
10 A The letter to Dr. Armstrong?  
11 Q Yes. Where was that published?  
12 A It was not published.  
13 Q Okay. My last two questions. We talked a lot about  
14 medical terms here. Can you define for me neoplasia?  
15 A Well --  
16 Q In the most simplest terms.  
17 A All right. Let's break it down into the word neo,  
18 which I suppose is Greek for new; and plasia for  
19 growth. New growth.  
20 Q Okay. Do some doctors use neoplasia for cancer?  
21 A Yes.  
22 Q Okay. So if somebody wrote, no neoplasia, it would  
23 mean no cancer, correct?  
24 MR. KLAMANN: I object to the form of the  
25 question. There's no context. It calls for

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1 speculation and conjecture and opinion testimony, the  
2 very thing you were complaining about earlier.  
3 BY MR. WISNIEWSKI:  
4 Q You can answer the question, Doctor.  
5 A Yes.  
6 MR. WISNIEWSKI: Thank you, Doctor. No further  
7 questions.  
8 MR. KLAMANN: Just a couple. Let me have this  
9 letter that Mr. Wisniewski just asked you about marked  
10 as an exhibit, Doctor, so that we have it for the  
11 record.  
12 I'll ask the court reporter to do that right now.  
13 (Deposition Exhibit No. 1, Letter, was marked by  
14 the reporter.)  
15 MR. WISNIEWSKI: Are we done?  
16 MR. KLAMANN: Just about.  
17 MR. WISNIEWSKI: Off -- or just on the -- on the  
18 record. This is the --  
19 MR. KLAMANN: Wait a minute. She's --  
20 THE REPORTER: On?  
21 MR. WISNIEWSKI: Sorry.  
22 THE REPORTER: Hold on.  
23 MR. WISNIEWSKI: For the record, exhibit -- the  
24 first exhibit and only exhibit to this deposition is  
25 Mr. William -- Dr. William Smith's letter to



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1 Mr. Greg -- or George Armstrong dated June 12, 1996,  
2 and it's addressed to George Armstrong, M.D., Director  
3 of New York University, Bellevue Medical Center.  
4 MR. KLAMANN: 1956?  
5 MR. WISNIEWSKI: 19 -- I'm sorry -- 1956. And  
6 it's on New York University stationery.  
7 MR. KLAMANN: We can all stipulate that that's the  
8 letter that -- what's the exhibit number?  
9 THE REPORTER: 1.  
10 MR. KLAMANN: 1.  
11 FURTHER EXAMINATION  
12 BY MR. KLAMANN:  
13 Q Doctor, Exhibit No. 1, is this the letter that you  
14 wrote to Dr. Armstrong that we discussed earlier  
15 relating to Dr. Lanza's --  
16 A Yes, sir.  
17 MR. MCELANEY: His file copy of it.  
18 MR. KLAMANN: Yeah, fair enough.  
19 Q A true and accurate photocopy of the letter appears as  
20 Exhibit 1?  
21 MR. OHLEMEYER: There's no objection to that.  
22 A Yes.  
23 BY MR. KLAMANN:  
24 Q Thank you. And Doctor, to kind of summarize what we've  
25 been about this afternoon, your interest in the 1950s

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1 was in cancer prevention. Would that be fair?  
2 MR. RUBIN: Objection, leading. Beyond the scope  
3 of the recross.  
4 A Yes.  
5 BY MR. KLAMANN:  
6 Q And one of the goals of the Cancer Prevention Committee  
7 that you founded in 1948 -- and I'm reading from a news  
8 release dated November 20th, 1948 -- was to prevent  
9 human beings from coming into contact with chemicals or  
10 substances that cause cancer?  
11 MR. RUBIN: Same objection.  
12 MR. MCELANEY: Objection.  
13 BY MR. KLAMANN:  
14 Q Was that a fair statement?  
15 A Yes.  
16 MR. KLAMANN: That's all I've got. Thanks very  
17 much.  
18 A Thank you.  
19 MR. MCELANEY: Can we just read that back?  
20 THE REPORTER: What part?  
21 MR. MCELANEY: The question.  
22 MR. WISNIEWSKI: Just for the record, this says  
23 chemicals. It doesn't --  
24 MR. MCELANEY: Chemicals.  
25 MR. RUBIN: Well, then I object and move to strike

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1 the question and the answer as reading from something  
2 that was not in the document.  
3 MR. KLAMANN: Fine, Mr. Rubin. Let's go about it  
4 this way.  
5 FURTHER EXAMINATION  
6 BY MR. KLAMANN:  
7 Q Dr. Smith, you were the founder -- if I can ask you a  
8 couple of additional questions. As a result of  
9 objections and comments made by defense counsel, let me  
10 do that.  
11 You were the founder, I think you indicated, of  
12 the Cancer Prevention Committee?  
13 MR. RUBIN: Objection. Same grounds.  
14 A Yes.  
15 BY MR. KLAMANN:  
16 Q And was there any kind of a press release that was done  
17 in connection with the organization of that committee?  
18 A Yes.  
19 MR. RUBIN: Objection. Same grounds.  
20 BY MR. KLAMANN:  
21 Q And were you the one that made the announcement of the  
22 formation of the committee?  
23 MR. RUBIN: Objection. Same grounds.  
24 A The press release was developed by the public relations  
25 department of Memorial Hospital.

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1 Q Did you --  
2 A They talked to me about it.  
3 Q Yes, sir. And did you approve the press release?  
4 MR. RUBIN: Objection.  
5 A Yes.  
6 BY MR. KLAMANN:  
7 Q And would it be fair to say that the announcement that  
8 was made -- and I'll just read from it here -- the new  
9 organization will collect information about chemicals  
10 that cause cancer and will devise methods for  
11 preventing human beings from coming into contact with  
12 such chemicals.  
13 MR. RUBIN: Objection. Same grounds.  
14 BY MR. KLAMANN:  
15 Q Was that an accurate statement of the goals --  
16 A Yes.  
17 Q -- of the Cancer Prevention Committee, Doctor?  
18 MR. RUBIN: Objection. Same grounds.  
19 A Hm-hmm.  
20 BY MR. KLAMANN:  
21 Q And was it in that spirit that you spoke to Lorillard  
22 or the Kent man and made the recommendations that you  
23 made --  
24 MR. OHLEMEYER: I object to the form of the  
25 question.

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1 MR. MCELANEY: I object to the form. Lack of  
2 foundation.  
3 BY MR. KLAMANN:  
4 Q -- to prevents human beings to coming into contact --  
5 A Yes.  
6 Q -- with carcinogenic chemicals?  
7 A Yes.  
8 MR. MCELANEY: I object to the form of question.  
9 MR. KLAMANN: Thanks very much. That's all I  
10 have.  
11 FURTHER EXAMINATION  
12 BY MR. OHLEMEYER:  
13 Q Just a couple, Doctor. Doctor, is it fair to say that  
14 in connection with your work in that committee you did  
15 everything you could to disclose and publish to members  
16 of the scientific community substances and methods of  
17 being exposed and circumstances of exposures to  
18 substances that might put people at risk of developing  
19 disease?  
20 MR. KLAMANN: Objection. Asked and answered two  
21 hours ago in your cross-examination.  
22 A I would say yes.  
23 MR. OHLEMEYER: That's all I have. Thank you.  
24 MR. KLAMANN: Thanks very much for coming today,  
25 Doctor.

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1 \* \* \* \* \*  
2 (Completed this deposition at 4:30 p.m. this  
3 date.)  
4 (It was indicated that the deponent would waive  
5 reading and signing of the deposition transcript.)  
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## CERTIFICATE

1  
2  
3 I, Michelle A. Costigan, Notary Public, in and for the  
4 State of Maine, hereby certify that on the 7th day of May,  
5 1997, personally appeared before me DR. WILLIAM SMITH, the  
6 within-named deponent, who was sworn to testify the truth,  
7 the whole truth, and nothing but the truth in the  
8 above-named cause of action.  
9 And that thereupon this deposition was stenographically  
10 reported by me and later reduced to typewriting by means of  
11 Computer-Aided Transcription under my direction, and the  
12 foregoing is a full and true record of the testimony given  
13 by the deponent.  
14 I further certify that the adverse party was duly  
15 notified according to law to attend at the taking of said  
16 deposition and did attend.  
17 I further certify that I am a disinterested person in  
18 the event or outcome of the above-named cause of action.  
19 IN WITNESS WHEREOF, I subscribe my hand and affix my  
20 seal this 16th day of May, 1997.



Michelle A. Costigan

Notary Public

My commission expires February 12, 2002.

CERTIFICATE

I, Michelle A. Costigan, Notary Public, in and for the State of Maine, hereby certify that on the 7th day of May, 1997, personally appeared before me DR. WILLIAM SMITH, the within-named deponent, who was sworn to testify the truth, the whole truth, and nothing but the truth in the above-named cause of action.

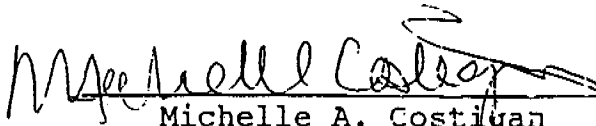
And that thereupon this deposition was stenographically reported by me and later reduced to typewriting by means of Computer-Aided Transcription under my direction, and the foregoing is a full and true record of the testimony given by the deponent.

I further certify that the adverse party was duly notified according to law to attend at the taking of said deposition and did attend.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this 16th day of May, 1997.

A true copy, attest:

  
Michelle A. Costigan  
Notary Public

My commission expires February 12, 2002.